



CRM-M-35979-2025

-1-

**251 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35979-2025

Date of Decision: 04.09.2025

Kharak Bahadur

..... Petitioner

Versus

UT Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.A.P. Kaushal, Advocate and
Ms. Pallavi Bahre, Advocate, for the petitioner.
Mr. Sumit Jain, Addl. PP, UT, Chandigarh.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached by way of filing the present petition praying for grant of regular bail in case FIR No.74 dated 03.12.2022 under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sector 49, Chandigarh.
2. Succinctly, facts of the case are that on 03.12.2022, the police party while on patrolling reached opposite side of road 51A/BT point from the green belt, saw a young boy coming towards road A/B. On seeing the police, he suddenly turned back. The police got suspicious and thus, stopped him. On asking, he disclosed his name as Tarun Garg. He was suspected to be carrying some contraband and thus, on conducting search, 110 grams of charas was recovered from him. He failed to produce the licence regarding the possession of the same and thus, on the registration of the FIR, he was arrested on the spot. The investigation commenced. Samples taken were sent to the FSL. During investigation, he made a disclosure statement, wherein, he disclosed that the recovered contraband was purchased from Bahadur i.e. the petitioner. Thus, the petitioner was also arrayed as an accused. On the same day, the police reached the place i.e. Manikaran District Kullu (HP)



disclosed by Tarun Garg and on conducting raid, 5 kgs of charas was recovered from the petitioner. Thus, the petitioner was arrested on the spot on 04.12.2022. The petitioner approached the Court of learned Judge Special Court, Chandigarh praying for grant of regular bail. However, after hearing both the sides, the learned Court finding no merit in the same, dismissed the bail application filed by the petitioner vide order dated 03.11.2023. Earlier the petitioner approached this Court twice by way of filing CRM-M-59742-2023 and CRM-M-48262-2024 praying for bail, which were dismissed as withdrawn vide orders dated 13.05.2024 and 01.10.2024, respectively. Hence, the petitioner has approached this Court praying for grant of regular bail by way of filing the present third petition.

3. It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the petitioner was named in the FIR only on the basis of the disclosure statement of the co-accused, which is even otherwise not an admissible evidence. He submits that the alleged recovery of 5 kgs of charas has been planted on the petitioner. He submits that the petitioner is behind bars from the last more than 2½ years, however, till date the prosecution has not been able to conclude the trial. He submits that all the prosecution witnesses are the official witnesses, but they intentionally avoiding their appearance before the trial Court so as to prolong the incarceration of the petitioner. To buttress his arguments, he has submitted that the petitioner has no criminal antecedents, as he has never been involved in any other criminal case except the present case. He, thus, submits that in the facts and circumstances of the case, the petitioner deserves the concession of regular



bail.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that complicity of the petitioner surfaced during the investigation, when co-accused Tarun Garg was arrested. It is submitted that there is recovery of 5 kgs of charas, which is a heavy commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted. On instructions, he has submitted that 06 prosecution witnesses remain to be examined. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was named in the FIR on the basis of the disclosure statement of the co-accused and later on 5 kgs of charas was allegedly recovered from him. Custody certificate of the petitioner would show that the petitioner has suffered incarceration of 02 years, 08 months & 29 days as on 04.09.2025. It further reveals that the petitioner has no criminal antecedents. As submitted before this Court, 06 prosecution witnesses remain to be examined. Needless to say that every accused has the fundamental right of speedy trial.

6. As held by the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260***, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively



exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20 xxxxx

21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

22 xxxxx

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'

7. The trial of the case is likely to take sufficient time. Speedy trial is the right of every accused. The Hon'ble Supreme Court in **Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya Vs. National Investigation Agency, 2022(1) SCC 695** has held as under:



“Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

8. The Hon’ble Supreme Court in a recent decision dated 03.07.2024 in **Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024**, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India.

9. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail to the petitioner.

10. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

11. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

04.09.2025

sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No