



CRM-M-39083-2024

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

CRM-M-39083-2024

Date of Decision: 23.01.2025

Arun Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sangram S. Saron, Advocate and
Mr. M.B. Rajwade, Advocate, for the petitioner.
Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.02 dated 09.01.2024 under Section 22 of NDPS Act, 1985, registered at Police Station Garhdiwala, District Hoshiarpur.

2. As per the facts of the case, on 09.01.2024, the Police party while on patrolling spotted clean shaven person coming on Katcha path nursery side towards paved road. On seeing the police party, he got perplexed and threw a heavy polythene envelop by taking it out from his right pocket. On suspicion, he was stopped and on asking he disclosed his name as Arun Kumar (petitioner) son of Balkar Singh. It was suspected that the polythene envelop, might contained some contraband and hence, he was given offer under Section 50 of the NDPS Act for the search. On searching 13 injections of Buprenorphine were recovered from the same. The petitioner failed to produce any licence regarding possession of the same and thus, the FIR was registered and he was arrested on the spot. The



investigation commenced and the samples taken were sent to the FSL. The petitioner approached the Court of learned Judge Special Court, Hoshiarpur 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 06.03.2024. Hence, the petitioner approached this Court praying for grant of bail by way of filing the present petition.

3. It has been vehemently contended by learned counsel for the petitioner that petitioner has been falsely and frivolously implicated in this case. He has submitted that recovery in the present case as per the prosecution, is from a public place, however, no independent witness has been joined. He submits that there is a violation of mandatory provisions of Section 50 of the Act in the present case. He submits that even otherwise from the FSL report, the contraband recovered weighed 25.922 grams Buprenorphine, whereas, the commercial quantity of the same as per statutory provisions is above 20 grams. He submits that though the petitioner is involved in one more case, however, in the same the Investigating Agency has filed cancellation report, which has been accepted by learned Special Court, Hoshiarpur vide order dated 04.01.2025. He, thus, submits that in the overall facts and circumstances of the present case, the petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that recovery was effected from the conscious possession of the petitioner. He submits that as per FSL report, the contraband recovered falls under the category of commercial quantity



and thus, provisions of Section 37 of the NDPS Act, are attracted in this case. He submits that out of 10 prosecution witnesses, 02 witnesses have been examined till date.

5. After hearing counsel for the parties and perusing the record, it is apparent that the petitioner was arrested in the present case on 09.01.2024. As per FSL report, the contraband recovered was 25.922 grams of Buprenorphine. Though the petitioner is involved in one other case, however, as per order produced before this Court, cancellation report has been accepted by learned Special Court, Hoshiarpur vide order dated 04.01.2025. Out of total 10 prosecution witnesses, 02 witnesses have been examined.

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 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.



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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.

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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 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. The trial of the case will take sufficient long time. 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.

8. 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.

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

		(RAJESH BHARDWAJ)
		JUDGE
23.01.2025	Whether Speaking/Reasoned :	Yes/No
sharmila	Whether Reportable :	Yes/No