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

**CRM-M No.39735 of 2025
Date of decision : 31.07.2025**

Mahesh Kumar @ Mahesh Arora**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Ms. Samridhi Sareen, Legal Aid counsel
for the petitioner.

Mr. Raj Karan Singh, Asstt. A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.0139, dated 14.09.2024, under Sections 22 & 29 of NDPS Act, registered at Police Station Mukerian, District Hoshiarpur (Annexure P-1).

2. Succinctly the facts of the case are that the police party, while on patrolling on 14.09.2024, saw a young person walking on the road. On seeing the police, he got perplexed and threw the heavy envelope from the right pocket of his trouser on the ground. On suspicion, he was stopped and on asking, he disclosed his name as Mahesh Kumar, i.e. the petitioner. He was suspected to be carrying some contraband in the envelope thrown by him and thus, on giving the offer, the search was conducted. 110 loose



narcotic pills were recovered from the same. He failed to produce any licence regarding the conscious possession of the same. Thus the FIR was registered and he was arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. As per the FSL report, the contraband contained 11.55 grams of Etizolam. On framing of the charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Hoshiarpur praying for the grant of bail. However, after hearing both the sides and finding no merit in the same, the learned Judge, Special Court, Hoshiarpur declined the petition filed by the petitioner vide order dated 29.10.2024. Hence being aggrieved, the petitioner is before this Court by way of filing the present petition praying for the grant of regular bail.

3. Learned legal aid counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. She has submitted that the recovery alleged has been effected from the public place, however no independent witness was joined. She has submitted that there is a violation of provision of Section 50 NDPS Act as well. She has submitted that the samples which were taken from the contraband for sending to the FSL is also in violation of the provisions of NDPS Act. She has submitted that the petitioner was falsely involved in 05 other cases, however he has been acquitted in one case and in one case, he has already undergone the sentence. In two of the other cases, his sentence was completed. She has submitted that the petitioner is behind bars since the date of his arrest, i.e. 14.09.2024. She has submitted that in the facts and circumstances, the petitioner deserves to be granted



bail.

4. *Per contra*, learned counsel for the State however has opposed the submissions made by counsel for the petitioner. He, on instructions, has submitted that the recovery effected from the petitioner, as per the FSL, was found to be weighing 11.55 grams of Etizolam, which is commercial in nature and thus, the provisions of Section 37 NDPS Act are attracted. He has submitted that the petitioner is a habitual offender as he has also been convicted in 03 cases. He, on instructions, has submitted that out of 08 prosecution witnesses, no witness has been examined till date. He has placed on record custody certificate of the petitioner today in the Court and the same is taken on record.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that the contraband recovered in the present case is 11.55 grams of Etizolam, which is commercial in nature. The petitioner is behind bars since the date of his arrest, i.e. 14.09.2024. Out of 08 prosecution witnesses, no witness has been examined till date. As per the custody certificate, the petitioner has completed incarceration of 10 months and 15 days as on 30.07.2025. Though the petitioner is involved in 05 other cases, however he has been acquitted in one case and in one case, he has already undergone the sentence. In two of the other cases, his sentence was completed.

7. After perusal of the order passed by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (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.*

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21. *.....it 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.'

8. 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.

9. 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, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of bail. 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case. However, if the petitioner does not furnish the bail bonds within seven days from today, then his further custody period after one week will not be counted in this case.

31.07.2025

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Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No

(RAJESH BHARDWAJ)
JUDGE