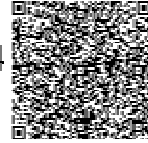


2025:PHHC:112124



[244] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45081-2025

Date of Decision : 25.08.2025

Sarwan Singh @ Samma

...Petitioner

versus

State of Punjab

....Respondent

Coram : **HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Malkiat S. Hundal, Advocate for the petitioner.
(Through V.C.)

Mr. Raj Karan, AAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. Petitioner has approached by way of filing the present second petition praying for grant of regular bail in case FIR No.136 dated 26.04.2022 under Sections 21(c)/29/61/85 of NDPS, 1985 registered at Police Station Goindwala Sahib, Tarn Taran, Punjab.

2. Succinctly, facts of the case are that police while patrolling on 26.04.2022 saw a person coming on foot. On seeing the police, he got perplexed and he took out a heavy transparent polythene from the right pocket of his trouser and threw it towards the side of the road. On suspicion, he was stopped. On asking, he disclosed his name to be Sarwan Singh alias Samma (petitioner). The police suspected some contraband in the polythene bag thrown by him. Thus, the same was searched. On conducting the search, 260 grams of *heroin* was recovered from the same. The petitioner

failed to produce any license regarding the possession of the same thus, the FIR was registered and he was arrested on the spot. The investigation commenced. The samples sent to the FSL. On the receipt of the FSL, the challan was presented, charges were framed and the trial commenced. The petitioner approached the learned Sessions Court at Tarn Taran, praying for grant of bail. However, on hearing, the same was declined vide order dated 15.11.2022. Aggrieved by the same, the petitioner, earlier approached this Court by way of filing CRM-M-3971-2023 which was disposed of vide order dated 11.12.2023. Hence, the petitioner is before this Court by way of filing the present second petition.

3. It has been contended by the counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery has been effected from the public place, however, no independent witness was joined. He submits that there is violation of mandatory provisions of Section 50 of the NDPS Act in conducting the search. He has further argued before this Court that even otherwise the commercial quantity of *heroin* is above 250 grams whereas recovery of 260 grams of *heroin* has been shown to be recovered from the petitioner is marginally higher than the commercial quantity. It is further submitted that though the petitioner has been implicated in two other cases as well, However, he has been acquitted in one and is on bail in the other. It has been contended by the counsel for the petitioner that out of the total 6 accused, 05 accused are already on bail and the petitioner is behind bars for the last 03 years. However, the prosecution has not been able to conclude

the trial and his fundamental right of speedy trial has been miserably defeated and in the facts and circumstances of the case, false implication of the petitioner is writ large. He, thus, submits that 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 on the due compliance of the provisions of the NDPS Act, 260 grams of *heroin* was recovered from the possession of the petitioner which is marginally above the commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted. He has submitted that the petitioner is a habitual offender who is involved in two other cases. On instructions, he has submitted that out of 12 prosecution witnesses, 08 witness have been examined till date. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is inferred that the petitioner is behind bars since 26.04.2022. The alleged recovery from the petitioner is 260 grams of *heroin* which is marginally above the commercial quantity. Custody certificate of the petitioner would show that the petitioner has suffered incarceration of 03 years, 03 months and 28 days as on 24.08.2025. It further reveals that the petitioner is involved in two more cases, however, he has been acquitted in one and is on bail in the other. Out of total 12 prosecution witnesses, 08 witnesses have been examined till date.

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.

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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.

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. As per law settled, speedy trial to the petitioner despite his involvement in multiple cases cannot be taken away. 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.”

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.

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. 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.

9. 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.

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

(RAJESH BHARDWAJ)
JUDGE

25.08.2025
'R. Sharma'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>