



234

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

**CRM-M No.51642 of 2024
Date of decision : 21.05.2025**

Gurkanwal Preet Singh @ Guri @ Sahib**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. J. S. Arora, DAG, 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.33 (Annexure P-1), dated 23.04.2024, under Sections 21(c) & 23 of Narcotic Drugs & Psychotropic Substance Act, 1985 (for short 'NDPS Act')(offence under Section 29 of NDPS Act added later on), registered at Police Station Sadar Jalalabad, District Fazilka.

2. Succinctly the facts of the case are that the police party while on patrolling on 23.04.2024, spotted 03 young men coming on the motorcycle. On seeing the police, they got perplexed and driver of the motorcycle tried to turn back, however they were apprehended. On asking, driver of the motorcycle disclosed his name as Sonu Singh @ Soni whereas



the boys sitting pillion disclosed their names as Angrej Singh @ Gaggi and Gurbant Singh @ Bunty. They were suspected to be carrying some contraband and thus they were given the offer for the search. On conducting the search of Angrej Singh @ Gaggi, 500 grams of heroin was recovered whereas on conducting the search of rest two, no contraband was recovered. All of them were riding together. They failed to produce any licence regarding the conscious possession of the same and thus the FIR was registered and all three boys were arrested on the spot. On registration of the FIR, the investigation commenced. During the investigation, they made disclosure about the involvement of the petitioner, namely, Gurkanwal Preet Singh @ Guri @ Sahib, who was said to be the purchaser of contraband and thus, he was also arrayed as an accused in the present case. The petitioner was arrested on 16.06.2024. The petitioner approached the Court of learned Judge, Special Court, Fazilka praying for the grant of bail. However, after hearing both the sides finding no merit in the same, the learned Judge, Special Court, Fazilka declined the petition filed by the petitioner vide order dated 01.10.2024. 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 counsel for the petitioner has vehemently contended that neither the petitioner is named in the FIR nor there is any recovery has been effected from him. He has submitted that 500 grams of heroin has been allegedly recovered from rest of the 03 co-accused. He has submitted that the petitioner has been implicated in the present case on the basis of disclosure statement of the co-accused, which is not even an



admissible evidence. He has submitted that the petitioner is behind bars since the date of his arrest, i.e. 16.06.2024, however there is no material progress in the trial. He 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 co-accused is 500 grams of heroin, which is a commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted. He has submitted that as per the disclosure statement of co-accused, the petitioner was the purchaser, to whom the recovered contraband, i.e. 500 grams of heroin was to be sold for an amount of Rs.1,50,000/-. He, on instructions, has submitted that out of 17 prosecution witnesses, only 06 witnesses have been examined so far. He has produced custody certificate of the petitioner today in the Court and the same is taken on record. He has submitted that the petitioner is involved in one more case under the NDPS Act.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that neither the petitioner is named in the FIR nor any recovery has been effected from him. However he has been arrayed as an accused in the present case on the basis of disclosure statement of co-accused. Custody certificate produced by the learned State counsel shows that the petitioner has suffered incarceration of 11 months and 01 day as on 20.05.2025. It further reflects that the petitioner is involved in one



more case under the NDPS Act. As submitted before this Court, out of 17 prosecution witnesses, only 06 witnesses have been examined so far. The quantity recovered from the co-accused is 500 grams of heroin, which falls under the commercial quantity.

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.

21.05.2025

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(RAJESH BHARDWAJ)
JUDGE
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No