



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

CRM-M-62990-2024 (O&M)

Date of decision : 28.02.2025

Surjit Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashish Pal Kaushal, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Petitioner has approached this Court by way of filing the present second petition praying for grant of regular bail to him in case FIR No.17 dated 22.01.2024, under Sections 18/25/27/29/61/85 of NDPS Act, 1985 and Section 25 of Arms Act, 1959, registered at Police Station Chherarta District Amritsar.
2. Succinctly facts of the case are that the police party on 22.01.2024, received a secret information to the effect that Surjit Singh and Gurkirat Singh, both were involved in selling intoxicant substance. It was informed that they were travelling in Fortuner Car bearing Registration No.PB 02 BU 5555 and in case of barricade, they could be arrested along with the contraband. On receiving the information, the raiding team was constituted and barricading was laid, vehicle as disclosed was stopped and driver of the vehicle disclosed his name to be Surjit Singh whereas, the person sitting by the side disclosed his name as Gurkirat Singh. They were suspected to be carrying the contraband and thus, they were given the offer to be searched. On conducting the search of Surjit Singh (petitioner), from the polythene bag beneath his upper jacket, wrapped in a red piece of



cloth, which was tied around his waist, opium weighing 2 kg 600 grams was recovered. Similarly, search of Gurkirat Singh was also conducted and from the right pocket of his jacket, a polythene bag containing the opium weighing 400 grams was recovered. Both of them failed to produce any license regarding the possession of the same and hence, both were arrested on the spot. On registration of the FIR, investigation commenced. The samples taken were sent to the FSL. Petitioner approached the Court of learned Judge, Special Court, Amritsar praying for grant of bail. However, after hearing counsel for the parties, learned Judge, Special Court declined the same vide order dated 02.05.2024. Being aggrieved, petitioner earlier approached this Court by way of filing CRM-M-33692-2024 however, the same was dismissed as not pressed by this Court vide order dated 21.08.2024. Hence, petitioner is before this Court by way of filing the present second petition.

3. It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He submits that the FIR in the present case has been registered on the basis of the secret information however, there is a violation of the mandatory provisions of Section 42 of the NDPS Act. He submits that no independent witness has joined. He further submits that as per the prosecution, the recovery effected is from the person of the petitioner but there is a violation of the mandatory provisions of Section 50 of the NDPS Act as well. He submits that though petitioner has been falsely implicated in one more case however, he has completed his sentence in the same. He submits that the petitioner is behind bars since the date of his arrest however, till date, there is no progress in the trial and the prosecution is prolonging the trial in order to prolong the incarceration of the petitioner. He submits that in the facts and circumstances of the case, petitioner



deserves to be granted bail.

4. *Per contra*, learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from Inspector Vinod Sharma, submits that on due compliance of the statutory provisions of the NDPS Act, recovery was effected from the petitioner. He submits that from the search of the petitioner, 2 kg 600 grams of opium was recovered whereas, from the co-accused 400 grams of opium was recovered. Thus, in all from both of them, 3 kg opium has been recovered which is a commercial quantity and thus, provisions of Section 37 of NDPS Act are attracted. It is submitted that out of 17 prosecution witnesses, 03 witness have been examined. He has produced the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the FIR is registered on the basis of secret information. Both the accused were named in the FIR. From the search of the petitioner 2 kg 600 grams of opium was recovered. Learned State counsel has produced the custody certificate which shows that petitioner has completed incarceration of 01 year and 30 days as on 27.02.2025. It further reflects that though petitioner is involved in one more case however, he has completed his sentence in the same.

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 petitioners is covered by the ratio of law laid down by the Hon'ble Supreme Court. In this 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.

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.

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 conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner

succeeds in making out a case for grant of regular 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.

28.02.2025 (RAJESH BHARDWAJ)
m.sharma JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No