



CRM-M-63239-2024

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

CRM-M-63239-2024

Date of Decision: 21.03.2025

Jaswinder Singh @ Johny

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Dhruvwinder Brar 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 regular bail in case FIR No.44 dated 21.08.2023 under Section 22 of NDPS Act, 1985, registered at Police Station Mukandpur, District SBS Nagar.

2. Succinctly, facts of the case are that on 21.08.2023 the Police party while on patrolling saw a person carrying a polythene bag in his hand. On seeking the police, he tried to run and threw the polythene bag which he was holding in his hand, however, he was overpowered by the police and the polythene bag was also picked up. On asking he disclosed his name as Jasvinder Singh @ Johny (petitioner). On conducting the search, 70 tablets of Etizolam were recovered from the polythene bag which was thrown by the petitioner. He failed to produce any licence regarding possession of the same and thus, the FIR was registered and he was arrested on the spot. Samples taken were sent to the FSL. On registration of the FIR, the investigation commenced and the challan was presented. On framing of charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Shaheed Bhagat Singh Nagar 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 23.10.2023. Hence, the petitioner has 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 the petitioner has been falsely and frivolously roped in the present case by the police. He has submitted that recovery has been allegedly effected from the polythene bag, which was not even in the possession of the petitioner. He submits that there is a violation of mandatory provisions of Section 50 of the NDPS Act in the present case. He submits that the petitioner is behind bars since the date of his arrest, however, till date the trial has not been concluded. He submits that as per the provisions of NDPS Act, the contraband weighing more than 2.5 grams of Etizolam falls under the commercial quantity, whereas, the contraband allegedly recovered from the petitioner was found to be 3.99 grams, which cannot be a heavy commercial quantity. He, thus, submits that in the facts and circumstances, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that it was a chance recovery and as per FSL received, it was confirmed to be Etizolam weighing 3.99 grams, which falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. It is submitted that two prosecution witnesses still remain to be examined. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars since 21.08.2023. The



custody certificate would reflect that he has suffered incarceration of 01 year 04 months & 23 days as on 14.1.2025. Though the petitioner is involved in other cases as well, however, in FIR No.196 dated 17.07.2005 registered under Sections 302/34 IPC and Sections 25/27/54/59 of Arms Act, he has completed his sentence, whereas, in FIR No.82 dated 29.11.2016, he has been acquitted.

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.

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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

21.03.2025

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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No