



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

CRM-M-64005-2024

Date of decision : 20.02.2025

Shalesh

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sudhir Hooda, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.554 dated 19.06.2022, under Sections 21-C, 22-C of NDPS Act, registered at Police Station Assandh, District Karnal.

2. Succinctly facts of the case are that the police party on 19.06.2022 received a secret information to the effect that Sales Saini son of Dharambir, Kuldeep son of Dharampal and Vishnu Kumar son of Rohtash were indulged in selling intoxicating tablets since long in their vehicle bearing No.HR-55Y-7709. It was informed that they were coming in their vehicle from Safidon to sell intoxicating tablets and in case of raid, they could be arrested along with the contraband. On receiving the information, barricading was laid and the vehicle as disclosed was seen coming which was stopped. The inmates were asked their names. The driver of the vehicle disclosed his name as Vishnu Kumar whereas the person sitting on the adjoining seat of driver disclosed his name as Kuldeep and the person sitting on the rear seat disclosed his name as Sales Saini (petitioner). They were given the offer to be searched and on conducting



the search, 02 boxes each containing 120 bottles of Omrex Cough Syrup, 100 ml per bottles of Embit Bio Medix were recovered and thus, total bottles were found to be 240 and three envelopes of black coloured were also found. All the four packets were opened and total 1990 tablets of Tramadol Hydrochloride were recovered. The weight of the contraband recovered i.e. 240 bottles of Omrex Cough Syrup and 2990 tablets of Tramadol Hydrochloride was 03 kg 525 grams. The samples were taken and sent to the FSL and as per the report of FSL, the contraband recovered falls under the category of commercial quantity. The accused were arrested on the spot. Petitioner approached the Court of learned Additional Sessions Judge, Karnal praying for grant of bail. However, after hearing counsel for the parties, the same was declined vide order dated 04.05.2023. Hence, being aggrieved, petitioner is before this Court praying for grant of regular bail.

3. It has been submitted by counsel for the petitioner that the FIR in the present case was lodged on the basis of secret information. However, there is violation of Section 42 of the NDPS Act. He submits that the recovery was effected from the car and not from the conscious possession of the petitioner and thus, there is violation of Section 50 NDPS Act as well. He has submitted that no independent witness has been joined by the investigating agencies. It is submitted that petitioner is behind bars since the date of his arrest. However, till date, there is no progress in the trial. To buttress his arguments, he submits that similarly situated co-accused namely, Vishnu Kumar, has already been enlarged on bail by this Court vide order dated 25.10.2024. He has further submitted that petitioner was never involved in other case of the similar nature. He thus, submits that petitioner deserves to be granted regular bail.



4. Learned State counsel however, has opposed the submissions made by counsel for the petitioner. He on instructions from ASI Pawan Kumar submits that petitioner was specifically named in the secret information and he was arrested on the spot along with the contraband. It is submitted that the recovery of the contraband effected falls under the commercial quantity as per the mandate of NDPS Act and thus, provisions of Section 37 of the NDPS are attracted. He on instructions submits that out of 13 prosecution witnesses, 04 witnesses have been examined till date. He has not controverted the fact that co-accused Vishnu Kumar has already been granted bail by this Court. He has placed on record the custody certificate of the petitioner which shows that though petitioner was involved in other cases but the same pertains to the matrimonial dispute.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the FIR has been registered on the basis of secret information and recovery was effected thereafter. However, there is no dispute that similarly situated co-accused has already been granted bail. As per the custody certificate, petitioner is behind bars from last 02 years and 08 months as on 19.02.2025. It further reflects that petitioner is involved in other cases under the Hindu Marriage Act and Sections 406 & 498-A of IPC. However, he is on bail in those cases.

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.

20.02.2025
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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