



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

CRM-M-899-2025

Date of decision : 24.02.2025

Rakesh

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana assisted by
SI Rattan Singh.

RAJESH BHARDWAJ, J. (Oral)

1. Petitioner has approached this Court by way of filing the present third petition praying for grant of regular bail to him in case FIR No.1129 dated 07.12.2022, under Section 22(C) of NDPS Act No.61 of 1985, registered at Police Station Civil Line, Sirsa, District Sirsa.

2. Succinctly facts of the case are that on 07.12.2022, the police party while on patrolling, spotted a young person who was carrying a bag on his shoulder. On suspicion, he was stopped and on asking, he disclosed his name as Rakesh (petitioner) son of Madan Lal. He was suspected to be carrying some contraband in the bag and thus, was given offer for the search. On conducting the search, 50 vials of Rx Chlorpheniramine Maleate Codeine Phosphate Syrup MAVEREX cough syrup each vial weighing 100 ml were recovered from the petitioner. Petitioner failed to produce any licence regarding the possession of the same and hence, the FIR was registered and he was arrested on the spot. On registration of the FIR, investigation commenced and the samples taken were sent to the FSL.

On conclusion of the investigation, report under Section 173 Cr.P.C. was filed and trial commenced. Though in all, there were 03 accused however,



one of the accused could not be arrested and hence, the trial commenced qua two of the accused. Petitioner approached the Court of learned Additional Sessions Judge, Sirsa praying for grant of bail however, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide order dated 02.02.2023. Thereafter, petitioner earlier approached this Court twice for grant of regular bail however, the same were dismissed as withdrawn vide orders dated 01.06.2023 and 04.04.2024. Hence, petitioner is before this Court by way of filing the present third petition.

3. It has been contended by counsel for the petitioner that the alleged recovery was effected from the petitioner from public place however, no independent witness was joined. He submits that while effecting recovery from the petitioner, there is violation of the mandatory provisions of Section 50 of NDPS Act. It has been submitted that there is violation of the mandatory provisions of the NDPS Act in taking the samples and sending the same to the FSL. It is submitted that the petitioner is behind bars since the date of his arrest and thus, has completed incarceration of more than two years. However, there is no progress in the trial. To buttress his arguments, he submits that petitioner has no criminal antecedents as he has never been involved in any other case of the similar nature.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the recovery was effected from the petitioner by due compliance of the provisions of the NDPS Act. He submits that the recovery effected from the petitioner is commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted. He submits that out of 03 accused, 02 of the accused have



been arrested and both are behind the bars. However, the third accused is yet to be arrested. He has produced the custody certificate of the petitioner before this Court and has further apprised this Court that out of 18 prosecution witnesses, only 02 witnesses are examined so far.

5. After hearing counsel for the parties and perusing the record, it is deciphered that petitioner is behind bars since 07.12.2022. The alleged recovery from the petitioner is 50 vials of Rx Chlorpheniramine Maleate Codeine Phosphate Syrup MAVEREX cough syrup each vial weighing 100 ml were recovered from the petitioner. Though provisions of Section 37 of the NDPS Act are attracted however, it cannot be denied that speedy trial is the fundamental right of every accused. If the prosecution has not been able to arrest third accused, petitioner cannot be held responsible for the same. Custody certificate reflects that petitioner has completed incarceration of 02 years 02 months and 14 days as on 22.02.2025. Out of 18 prosecution witnesses, only 02 witnesses have been examined till date. Custody certificate further reflects that petitioner has no criminal antecedents.

6. 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.”



7. 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.'

8. 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.

24.02.2025
m.sharma

(**RAJESH BHARDWAJ**)
JUDGE

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