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

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Date of decision: 12.12.2025

SUNIL KUMAR @ LUCKY

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Charanpreet Singh, Advocate for the petitioner.

Mr. K.D. Sachdeva, DAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. Petitioner has approached by way of filing the present petition praying for grant of regular bail in case bearing FIR No.112 dated 04.07.2024 under Section 22 of NDPS Act, registered at Police Station Garhshankar, District Hoshiarpur.

2. Succinctly, the facts of the case are that the police party, while on patrolling on 04.07.2024, when they were going towards the side of Denowal Khurd, Bagwai, Ibrahimpur. They saw two young persons coming on the motorcycle in high speed. On seeing the police, they got perplexed and turned back. The person sitting pillion threw a black colored polythene bag being carried by him on the left side of the road. The motorcycle driver took out a polythene bag from his right side pocket of his trousers and hid it in the plastic cover on the headlight of the motorcycle. The police apprehended both of them. On asking, the driver of the motorcycle disclosed his name to be Sunil Kumar @ Lucky (present petitioner) whereas the pillion rider, disclosed his name to be Sohan Lal @ Bittu. They were suspected to be carrying some contraband and

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thus, they were searched. On conducting the search of the polythene bag, 12 injections of Buprenorphine. Thereafter, conducting the search of the headlight of the motorcycle, 120 tablets of Etizolam were recovered. They failed to produce any license regarding the possession of the same. Thus, FIR got registered and both were arrested on the spot. After registration of FIR, investigation commenced. The samples taken were sent to the FSL. On completion of the investigation, the challan was presented and on framing of charges, trial commenced. Petitioner approached the learned Judge Special Court, Hoshiarpur for grant of bail. However, after hearing both the sides and finding no merit in the same, the learned Judge Special Court, Hoshiarpur declined the bail application vide order dated 31.08.2024. Aggrieved by the same, petitioner is before this Court praying for the grant of bail by way of filing the present petition.

4. Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in the present case. He further submits that the alleged recovery has been effected from a public place, however, no independent witness has been joined and there is a violation of the provisions of Section 50 of NDPS Act. He further submits that even otherwise, the alleged recovery effected by the police, from the polythene bag thrown by the co-accused of the petitioner, 12 intoxicant injections weighing 23.929 grams of Buprenorphine whereas the 120 tablets of Etizolam weighing 13.68 grams from the petitioner were recovered. He further submits that the petitioner is behind bars since 04.07.2024. However, there is no material progress in the trial. He further submits that though the petitioner is involved in three other cases, however, he is on bail in one case. He further submits that in the facts and



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5. *Per contra*, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that 120 tablets of Etizolam were recovered from the petitioner whereas 12 intoxicant injections were also recovered from the co-accused riding pillion. The weight of the 12 injections containing Buprenorphine was found to be 23.929 grams whereas the weight of Etizolam was found to be 13.68 grams and both are fall within the category of commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted. He further submits that though the petitioners were riding on a same motorcycle and they cannot take the benefit of their personal search. Both are liable to be prosecuted for the total contraband recovered from both the them. On instructions, he submits charges have been framed, and out of total 09 prosecution witnesses, none been examined till date. He he has produced custody certificate of the petitioners today in the Court and the same are taken on record.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested on 04.07.2024. The recovery from the petitioner was 13.68 grams of Etizolam whereas from the co-accused it was 23.929 grams of Buprenophine. However, this Court refrains from commenting upon the same, as it squarely falls within the domain of the trial Court. Custody certificate produced would show that petitioner has completed incarceration of more than 01 year, 05 months and 05 days as on 11.12.2025. It further reflects that the petitioner is involved in three more cases, however, in the case in which he has been convicted, he is on bail . Out of 9 prosecution witnesses, none has been examined till date.

8. As held by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain*



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that the case of the petitioners are 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.

20. xxxxx

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.

22. xxxxx

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."



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9. 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. The trial of the case will take sufficiently long time.

10. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeed in making out a case for grant of regular bail. Accordingly, the present petition is allowed. 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.

11. In case the bail bonds are not furnished by the petitioner during the period of 07 days from today, then his further custody period after one week will not be counted in the present case.

12.12.2025
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(RAJESH BHARDWAJ)
JUDGE

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