



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

CRM-M No.30418 of 2024

Date of Decision: 20.03.2025

Parkash Masih @ Akash

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. G. S. Ghuman, Advocate and
Mr. P. S. Maan, Advocate
for the petitioner.

Mr. J. S. Arora, DAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. Present petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.179, dated 25.09.2023, under Sections 21/25/29/61/85 of Narcotic Drugs & Psychotropic Substances Act (for short 'NDPS Act'), 1985, registered at Police Station Lopoke, District Amritsar (Rural), Punjab (Annexure P-1). Further prayer has been made for granting interim bail to the petitioner as special case while taking sympathetic view for attending last rites of mother of petitioner as her death has taken place on 19.06.2024 and for exempting the petitioner

2. Succinctly the facts of the case are that the police party while on patrolling on 25.09.2023, saw two youngsters riding the Mojesto Moped. SI signalled them to stop. On seeing the police, they got perplexed and tried to turn back, however the police party nabbed both of



them. On asking, the driver of Moped disclosed his name as Veerpal Singh @ Veeru whereas the second person riding pillion, disclosed his name as Parkash Masih @ Akash i.e. the petitioner. On suspicion, they were given the offer to be searched and on conducting the search of the dickey of Moped, 500 grams of heroin was recovered wrapped in black polythene bag. They failed to produce any licence regarding the conscious possession of the same and thus the FIR was registered and both were arrested on the spot. The investigation commenced and the samples taken were sent to the FSL. On conclusion of the investigation, the challan was presented and the learned trial Court on framing the charges, proceeded with the trial. The petitioner approached the Court of learned Judge, Special Court, Amritsar praying for the grant of bail. However, after hearing both the sides finding no merit in the same, the learned Judge, Special Court, Amritsar declined the petition filed by the petitioner vide his order dated 22.05.2024. Hence being aggrieved the petitioner is before this Court by way of filing the present petition praying for the grant of regular bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He has submitted that the alleged recovery has been made in a public place, however there is no independent witness joined while effecting the recovery. He has further submitted that there is a violation of mandatory provisions of Section 50 of NDPS Act as the offer given is totally against the law settled. He has submitted that though the alleged recovery falls under the commercial quantity, however the petitioner is



behind bars since the date of his arrest i.e. 25.09.2023. He has submitted that till date there is no material progress in the trial. He has further contended to buttress his arguments that the petitioner has no criminal antecedents as he has never been involved in any other case. He has thus submitted that in the facts and circumstances, the petitioner deserves to be granted bail.

4. *Per contra*, learned counsel for the State has opposed the submissions made by counsel for the petitioner. He, on instructions, has submitted that the recovery of 500 grams of heroin, which is commercial in nature, has been effected from the dickey of the moped on which the petitioner was riding pillion and thus the provisions of Section 37 of NDPS Act are attracted. He has submitted that there is no violation of compliance of Section 50 of NDPS Act. He has produced custody certificate of the petitioner today in the Court and has submitted that out of 11 prosecution witnesses, only 03 have been examined till date.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested on 25.09.2023. The recovery of 500 grams of heroin has been effected from the dickey of moped. As per the submissions, out of total 11 prosecution witnesses, only 03 witnesses have been examined till date. The alleged recovery of contraband is 500 grams of heroin that falls under the commercial quantity. Custody certificate would reflect that the petitioner has suffered incarceration of 01 year, 05 months and 18 days as on 19.03.2025. Custody certificate further reflects that the petitioner is not involved in



any other case. Needless to say that every accused has a fundamental right of speedy trial.

7. After perusal of the order passed by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (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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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.*

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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.'

8. 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.

9. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of 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.

20.03.2025

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Whether speaking/reasoned

Whether reportable

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Yes/No

Yes/No

**(RAJESH BHARDWAJ)
JUDGE**