



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

CRM-M-58735-2024
Date of Decision: 16.01.2025

Baghail Singh @ Sanju @ Baghel Singh Petitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Saurabh Kaushik, Advocate for the petitioner.
Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present second petition praying for granting him regular bail in case FIR No.37 dated 04.03.2023 under Section 22 of NDPS Act, 1985, registered at Police Station Sadar Nabha, District Patiala.

2. As per facts of the case, on 04.03.2023, the Police party received a secret information to the effect that Baghel Singh @ Jhaju (petitioner) is habitual of selling intoxicant tablets and he was coming on LML Vespa Scooter without number and in case of barricading, he could be arrested along with the contraband. On receiving the secret information, the naka was laid and a person coming on scooter as per secret information, was seen. On seeing the Police, he threw the transparent polythene envelop from his waist band. With the help of other officials, he was apprehended. On asking he disclosed his name as Baghel Singh @ Jhaju. The polythene envelop thrown by him was searched and on search of the same, 1800 intoxicant tablets were recovered. He failed to produce any licence for



possession of the same. On registration of FIR, the petitioner was arrested on the spot. Samples taken were sent to the FSL and as per FSL report, the salt was found to be Alprazolam weighing 216 grams. On completion of the investigation, challan was presented and charges were framed. The petitioner approached the Court of learned Vacation Judge-cum-Judge Special Court, Patiala 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 15.06.2023. Thereafter, the petitioner approached this Court praying for grant of regular bail by way of filing of CRM-M-65001-2023, which was dismissed as withdrawn vide order dated 25.07.2024. Hence, again the petitioner approached this Court praying for grant of bail by way of filing the present second petition.

3. It has been vehemently contended by counsel for the petitioner that petitioner has been falsely and frivolously implicated in this case. He has submitted that the FIR was registered on the basis of the secret information, however, there is violation of mandatory provisions of Section 42 of the NDPS Act. He submits that recovery was effected from a public place, but no independent witness was joined. He further submits that there is violation of Section 50 of the NDPS Act as well. He submits that the petitioner is behind bars since the date of his arrest i.e. 04.03.2023 and till date there is no progress in the trial. He submits that though secret information was that the petitioner is a habitual offender, but he is not involved in any other case. He, thus, submits that in the overall facts and circumstances of the present case, the petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by



counsel for the petitioner. He has submitted that the petitioner was arrested alongwith the contraband on the basis of the secret information. He submits that the contraband recovered as per FSL report, was found to be Alprazolam weighing 216 grams, which is a commercial quantity and thus, provisions of Section 37 of the NDPS Act, are attracted. He submits that out of 11 prosecution witnesses, none has been examined as on date.

5. After hearing counsel for the parties and perusing the record, it is apparent that the FIR was registered in the present case on the basis of the secret information. The petitioner was allegedly arrested alongwith the contraband which as per the FSL report was found to be 216 grams of Alprazolam. No independent witness has been joined. The custody certificate would show that the petitioner has no criminal antecedents as he is not involved in any other case. The petitioner has suffered incarceration of 01 year 07 months 10 days as on 15.01.2025.

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 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

16.01.2025

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