

FSL lab and the challan was presented. On framing of charges, the trial commenced. The petitioner approached the learned Judge, Special Court, Jalandhar 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 16.07.2024. Thereafter, the petitioner approached this Court by way of filing CRM-M-40185-2024, however, the same was dismissed as withdrawn on 18.12.2024. Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present second petition.

3. It has been contended by learned counsel for the petitioner that the case of the prosecution is totally planted upon the petitioner. He submits that as per case of the prosecution, the petitioner was traveling in a public transport, however, no independent witness has been joined by the investigating agency. He submits that there is violation of Section 50 and other mandatory provisions of the NDPS Act. He submits that the petitioner had earlier been prosecuted in five other cases in which the non-commercial quantity was allegedly recovered from the petitioner, however, petitioner is on bail in those cases. He further submits that the petitioner is behind the bars since the date of her arrest i.e. 16.12.2023 but there is no progress in the trial. He, thus, submits that in view of the facts and circumstances of the case, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that on due compliance of Sections 42 and 50 of the NDPS Act, recovery of 500 grams of heroin was effected from the petitioner, which falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. He further submits that the petitioner is a habitual offender as she is involved in 07 other cases out of which one is under the Excise Act and others six cases are under the NDPS Act. On instructions from

ASI, Sanjeev Kumar, he submits that out of total 10 prosecution witnesses, only 03 witnesses have been examined so far. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that in the present FIR recovery allegedly effected from the petitioner is commercial one. Out of total 10 prosecution witnesses, only 03 witnesses have been examined till date. The custody certificate would reflect that the petitioner has suffered incarceration of 01 year 04 months & 06 days as on 28.04.2025. It further reflects that the petitioner is involved in seven other cases, however, in one case she has undergone the sentence and in two cases she was released/discharged and in other remaining four cases she is on bail.

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 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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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. Thus, keeping in view the arguments raised by both the sides, 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.

29.04.2025
Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

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