



212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1772-2024

Date of decision : 19.02.2025

Sunny @ Shanny

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Raghav Goyal Chandiwala, Advocate for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.88 dated 04.07.2023, under Section 22-C, 27, 61, 85 of NDPS Act, 1985 registered at Police Station Kabarwala, District Sri Muktsar Sahib.

2. Succinctly the facts of the case are that the police party while on patrolling on 04.07.2023, spotted a person coming on foot. On seeing the Police, he got perplexed and thus, he was stopped. On asking, he disclosed his name as Shanny (petitioner) S/o Bhola Ram. He was suspected of carrying some intoxicant substance and thus, the offer for search of the petitioner was given and on conducting the search one polythene carrying 40 intoxicant tablets was recovered from him. He failed to produce any licence for possession of the contraband and thus, FIR was registered and the petitioner was arrested on the spot. Samples were taken and sent to the Forensic Science Laboratory. As per the FSL report, the received contraband recovered was Etizolam weighing 4.84 grams and thus, was found to be of commercial quantity. Thereafter, the petitioner approached the Ld. Additional Sessions Judge, Sri Muktsar Sahib, for grant of bail, however, after hearing both the sides, the same



was declined by the Ld. Additional Sessions Judge, Sri Muktsar Sahib vide order dated 10.10.2023. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery was effected from the petitioner at a public place, however, no independent witness from the public was joined by the police party. He submits that there is gross violation of mandatory provisions of Section 50 of NDPS Act. He submits that though the petitioner is involved in one more case, however, he is on bail in the said case. He submits that the petitioner is behind bars from the last about 1 ½ years in the present case, however, there is no progress in the trial and the prosecution is intentionally delaying the trial just to prolong the incarceration of the petitioner. He submits that in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that on due compliance of the mandatory provisions of the NDPS Act, the recovery was effected from the petitioner. He submits that the recovery effected from the petitioner was duly established to be contraband from the FSL report and the same was found to be weighing 4.84 grams of Etizolam, which is a commercial quantity. He submits that thus provisions of Section 37 of NDPS Act, are attracted. He has produced the custody certificate of the petitioner in the Court which would show that he has completed the incarceration of 01 year, 07 months and 12 days as on 18.02.2025. He further submits that out of 18 prosecution witnesses, 01 has been examined so far He submits that in the overall facts and



circumstances of the case, petitioner does not deserve to be granted bail.

5. On hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested on 04.07.2023. The alleged recovery effected from the petitioner is of commercial quantity, however, there is no gain saying that speedy trial is the fundamental right of every accused. Though the petitioner is involved in one more case, however, he is on bail in the said case. Custody certificate would show that the petitioner is behind bars from last 01 year, 07 months and 12 days as on 18.02.2025.

6. In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. 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.

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.*

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. 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 Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

19.02.2025

ps-I

(RAJESH BHARDWAJ)
JUDGE

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