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2025 PHHC 002971



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

CRM-M No.9314 of 2024

Akhilak

..... Petitioner

Versus

State of Haryana

..... Respondent

CRM-M No.59828 of 2024 (O&M)

Aarif

..... Petitioner

versus

State of Haryana

..... Respondent

Date of Decision: 13.01.2025

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mazlish Khan, Advocate;
Mr. Vikas Chopra, Advocate and
Mr. Nitin Bansal, Advocate
for the petitioner in CRM-M-9314-2024.

Mr. Yash Gupta, Advocate
for the petitioner in CRM-M-59828-2024.

Mr. Vijesh Sharma, Addl. A.G., Haryana assisted by
SI Manoj Kumar.

RAJESH BHARDWAJ, J. (ORAL)

CRM Nos.47316 & 17 of 2024 in CRM-M-59828-2024

Allowed as prayed for.

CRM-M-9314-2024

CRM-M-59828-2024

1. Present petitions have been filed praying for the grant of regular bail to the petitioners in case bearing FIR No.109, dated 09.06.2023, under Sections 20, 61, 85 of NDPS Act, registered at Police Station Bahin, District Palwal.



2. Succinctly the facts of the case are that the police party on 09.06.2023 received a secret information to the effect that Aarif, son of Seru and Akhlak, son of Aslam were involved in the illegal business of selling Ganja Patti. It was informed that they were coming from village Khaika on the motorcycle bearing registration No.HR-52C-7761 SPL carrying the Ganja Patti in a plastic bag. It was informed that in case of naaka, he could be apprehended along with the contraband. Finding the information reliable, notice under Section 42 of NDPS was prepared and the naaka was laid. As pointed out by the informer, a motorcycle was seen on which two boys were coming. The pillion rider was holding the bags. They were stopped and on asking, the person driving the motorcycle disclosed his name as Aarif, son of Seru whereas the person riding pillion has disclosed his name as Akhlak, son of Aslam. They were given the notice under Section 50 of NDPS Act for search of the bags. On search, 17.700 Kg Ganja was recovered from one plastic bag whereas 15.050 Kg was recovered from another plastic bag and thus, the total weight comes to 32.750 Kg Ganja Patti was recovered from both the bags. Both the accused were failed to produce any licence regarding the conscious possession of the same and thus were arrested on the spot. On the registration of FIR, the investigation commenced. The samples taken were sent to the FSL. The Investigating Agencies completed the investigation and filed the challan and on framing of the charges, the trial commenced. The petitioners approached the Court of learned Additional District & Sessions Judge, Palwal praying for the grant of bail. However after hearing both the sides finding no merit in the same, the learned Additional District & Sessions Judge, Palwal declined the bail petitions



filed by both the petitioners vide orders dated 11.01.2024 and 06.11.2024, respectively. Hence being aggrieved the petitioners are before this Court by way of filing the present petitions praying for the grant of regular bail.

3. Learned counsel for the petitioners have vehemently contended that the petitioners have been falsely implicated in this case. It has been submitted that the FIR has been registered on the basis of secret information, however there is a violation of mandatory provisions of Section 42 of NDPS Act. It has further been submitted that mandatory provisions of Section 50 of NDPS Act have not been complied with. It has been submitted that the recovery has been made from the public place, however no independent witness was joined by the police. It has been submitted that though the petitioners are involved in other cases as well, however they are on bail in those cases. It has been submitted that the petitioners are behind bars since the date of their arrest and they have completed incarceration of more than 1½ years. It has been submitted that the last prosecution witness was examined on 27.03.2023, however till date no other witness has been examined by the prosecution. It has been submitted that the prosecution is intentionally delaying the trial so as to prolong the incarceration of the petitioners. They have submitted that right of the petitioner to speedy trial is being flouted by the prosecution, hence, the petitioners deserve to be granted regular bail.

4. *Per contra*, learned counsel for the State has opposed the submissions made by counsels for the petitioners. He has submitted that the recovery has been made by due compliance of statutory provisions of the Act. He has submitted that the recovery effected from the petitioners



falls under the commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted. He has submitted that the petitioners are involved in other cases as well. He, on instructions from SI Manoj Kumar, has submitted that out of 12 prosecution witnesses, only one has been examined till date by the trial Court.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioners are behind bars since 09.06.2023 and 26.06.2023. Till date out of 12 prosecution witnesses, only one has been examined. Though the petitioners are involved in other cases, however as per instruction, they are on bail. Needless to say that even if provisions of Section 37 of NDPS Act are attracted, the right of speedy trial to the petitioners cannot be denied.

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 said 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.

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.*

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 petitioners succeed in making out a case for the grant of bail. Accordingly, the present petitions are allowed and the petitioners, namely, Akhlak and Aarif are ordered to be released on bail on their 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.

A photocopy of this order be placed on the file of other connected case.

13.01.2025

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

(RAJESH BHARDWAJ)
JUDGE