



107+223

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

**CRM-7862-2025 in/and
CRM-M-36221-2024
Date of decision : 24.02.2025**

Sanjay Upadhya

....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Lakshay Bector, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)**CRM-7862-2025**

Allowed as prayed for.

CRM-M-36221-2024

1. Present is the second petition that has been filed for grant of regular bail in case FIR No.112 dated 03.06.2022, under Sections 20, 29, 25, 27 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Sadar S.T.F., Phase-4, SAS Nagar Mohali.

2. As per the facts and circumstances of the case, the police party on 03.06.2022, received an information to the effect that Sanjay Upadhaya is indulged in selling drugs and is facing various cases pertaining to drug smuggling. It was informed that his son Sonu Kumar and Son-in-law, Akhlesh Kumar, since long time have been doing the illegal business of selling Ganja. They were going to supply ganja to a customer on their Activa bearing number PB-10-HS-5117 and in case of barricading, they could be arrested along with the contraband. On



receiving the information, the police reached at the spot. Both, Sonu Kumar and Akhlesh Kumar were stopped, while coming on the activa. On conducting their search 02 kg *ganja* was recovered from them. FIR was registered and they were arrested on spot. On registration of the FIR, investigation commenced. On the same day, during their interrogation, they disclosed about the present petitioner, namely, Sanjay Upadhaya and thus, the raid was conducted. On conducting the raid upon the petitioner, he was caught with 30 kg *ganja* and he was also arrested. On completion of the investigation, the challan was presented and charges were framed. Thereafter the trial Court proceeded with the trial. The petitioner approached the Learned Judge, Special Court, Ludhiana praying for grant of bail, however, finding no merit, the same was declined after hearing both the sides by Learned Judge, Special Court, Ludhiana vide order dated 22.11.2022. The petitioner, thereafter, approached this Court by way of filing of CRM-M-44787-2023 but the same was dismissed by this Court vide order dated 16.01.2024. Aggrieved by the same, the petitioner approached this Court praying for grant of bail by way of filing of present second petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. It is submitted that the petitioner was involved in the present case on the basis of disclosure statement of the co-accused. He submits that the petitioner is involved in 05 other cases and it is because of this the recovery of 30kg Ganja has been planted upon him. He submits that both the co-accused i.e. Sonu Kumar and Akhlesh Kumar have already been enlarged on bail by this Court vide order dated 14.07.2023 passed in CRM-M-43404-2022. It is submitted that petitioner is behind bars from last more than 2 ½ years,



however, there is no progress in the trial. He submits that in 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 the counsel for the petitioner and submits that the petitioner is a habitual offender. Recovery of 30 kg Ganja was effected from him which is a commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted in the present case. He submits that the recovery from the co-accused, who have been enlarged on bail, is of 22 kg ganja which is not commercial quantity and hence, the petitioner cannot claim parity with both the co-accused. He has produced the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was arrayed as an accused on the basis of disclosure statement of the co-accused. The alleged recovery of 30 kg ganja which is above 20 kg and as per the Schedule the same falls under the category of commercial quantity. However, the custody certificate produced by the State reflects that he has suffered incarceration of 02 years, 08 months and 16 days as on 23.02.2025. Though the petitioner is involved in 05 other cases, however, he has undergone the sentence in all those cases. As submitted by the State counsel, out of total 18 prosecution witnesses, only 05 have been examined as on date and 04 witnesses have given up.

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 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 to the petitioner. 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.

(**RAJESH BHARDWAJ**)
JUDGE

24.02.2025

ps-I

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