

were found, which were checked and total 10.64 grams Etizolam salt was found therein. He failed to produce any licence regarding possession of the same. Hence, he was arrested on the spot and on registration of the FIR, the investigation commenced and recovered substance was sent to the FSL lab and the challan was presented. On framing of charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Moga 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 19.10.2023. Thereafter, he approached this Court by way of filing CRM-M-32545-2024, which was withdrawn vide order dated 16.07.2024. 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 petitioner has been roped in the present case on the basis of the secret information but there is violation of Section 42. He submits that personal search of the petitioner was also carried out and thus, there is violation of Section 50 of the NDPS Act as well. He submits that the petitioner has been falsely involved in other cases also, however, he has already undergone the sentence in other case. He submits that recovery as alleged to have been effected is totally a planted recovery. It is submitted that the petitioner has completed incarceration of about 02 years, but there is no progress in the trial and the prosecution is not producing its witnesses so as to prolong the custody of the petitioner. 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 10.64 grams Etizolam salt was effected from the petitioner, which falls under the commercial quantity and hence, provisions of

Section 37 of the NDPS Act are attracted. It is submitted that out of total 11 prosecution witnesses, 04 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 the present FIR has been lodged on the basis of the secret information. Recovery allegedly effected from the petitioner is commercial one. Out of total 11 prosecution witnesses, 04 witnesses have been examined till date. The custody certificate would reflect that the petitioner has suffered incarceration of 01 year, 11 months & 22 days as on 04.08.2025. It further reflects that the petitioner is involved in two other cases, however, in one case he is on bail and in another case he has undergone the sentence.

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.

(RAJESH BHARDWAJ)
JUDGE

05.08.2025

Parveen Kumar

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