



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

CRM-M-55693-2023

Date of Decision: 08.01.2025

Sandeep @ Koka

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.
 Mr. Vijesh Sharma, Addl. AG, Haryana.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.241 dated 07.09.2023 under Section 15-C of NDPS Act, 1985, registered at Police Station Sadar Narwana, District Jind.

2. As per the facts of the case, on 07.09.2023, the Police party received a secret information to the effect that Sandeep @ Koka (petitioner) is indulged in selling poppy husk and if raid is conducted, he can be arrested along with the contraband. On receiving the information, the raid was conducted at the disclosed place and person found there was apprehended. On asking he disclosed his name as Sandeep @ Koka. Three bags were found lying there. He was given offer to be searched in the presence of the gazetted officer. Search of all the three bags was conducted and in all 52 kgs 700 grams of poppy husk was recovered from the bags. The petitioner failed to produce any licence regarding possession of the same and thus, he was arrested on the spot. Samples taken were sent to the FSL. On registration of



the FIR, the investigation commenced. The petitioner approached the Court of learned Additional Sessions Judge, Jind 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 16.10.2023. Hence, the petitioner approached this Court praying for grant of bail.

3. It has been vehemently contended by counsel for the petitioner that petitioner has been falsely and frivolously implicated in this case. He has submitted that the FIR has been registered against the petitioner on the basis of the secret information, however, there is violation of mandatory provisions of Section 42 of the NDPS Act. He has submitted that recovery has been planted on the petitioner without joining any independent witnesses. It is submitted that though the petitioner is involved in two other cases, however, he is on bail in those cases. He submits that even otherwise quantity recovered from the petitioner is 52 kgs 700 grams of poppy husk including the weight of bags, which is marginally above the commercial quantity. He submits that the investigation is complete and charges are framed. He, thus, submits that in the overall facts and circumstances of the present case, the petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by counsel for the petitioner. He has produced the custody certificate of the petitioner. He submits that recovery was effected after due compliance of the statutory provisions of the NDPS Act. He submits that recovery effected from the petitioner is commercial and thus, provisions of Section 37 of



NDPS Act are attracted in this case. On instruction from ASI Rampal, he has submitted that the petitioner is involved in two other cases under the NDPS Act. He submits that the investigation is complete and charges are framed, however, out of total 23 prosecution witnesses, none has been examined so far.

5. After hearing counsel for the parties and perusing the record, it is apparent that the petitioner was arrested on the basis of the secret information. The quantity recovered from the petitioner is 52 Kgs 700 grams of poppy husk, whereas, commercial quantity is above 50 kgs of poppy husk. Though the petitioner is involved in two other cases, however, as per custody certificate, he is on bail in those cases. The investigation is complete and charges are framed.

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 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. Keeping in view the arguments raised by both the sides and perusing the record, 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

08.01.2025

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