

to sell the contraband. If a raid is conducted, he could be arrested along with the contraband. On finding the information reliable, a raiding party was constituted and the police party reached at the disclosed place. A person, as informed, was found standing along with his motorcycle. On seeing the police, he got perplexed and tried to escape, however, he was overpowered by the police party. On asking, he disclosed his name Surender Kumar (petitioner). He was suspected to be carrying some contraband. After giving offer for the personal search, the same was conducted and from the right pocket of his pants, total 200 tablets of Buprenorphine were recovered. 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 Additional Sessions Judge, Faridabad 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 15.10.2024. Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present petition.

4. 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. He submits that there is violation of mandatory provision of Section 42 of the NDPS Act. 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 recovery as alleged to have been effected is totally a planted recovery. He vehemently submits that at the time of recovery total weight of the contraband was found to be 26 grams but from the FSL report the average weight of the one tablet was found to be 0.096 gram and the total weight of the

contraband comes to 19.2 grams ($0.096 \text{ gram} \times 200 = 19.2 \text{ grams}$), which being less than 20 grams and the same would fall under the non-commercial quantity. He further submits that the petitioner is being prosecuted for recovery of 26 grams whereas the recovered contraband from the petitioner being less than 20 grams, is non-commercial quantity. He, thus, submits that the case of the prosecution is seriously doubtful regarding the recovery effected from the petitioner. He further submits that the petitioner has no criminal antecedents, as he has never been involved in any other case. It is submitted that the petitioner is behind the bar since the date of his arrest i.e. 25.06.2024, but there is no progress in the trial. He, thus, submits that in view of the facts and circumstances of the case, the petitioner deserves to be granted bail.

5. 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 total 200 tablets of Buprenorphine 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 charges have been framed against the petitioner on the basis of challan presented for the recovery of 26 grams of intoxicant tablets, which falls under the commercial quantity. He further submits that the contentions raised by the learned counsel for the petitioner regarding the non-commercial quantity are without any substance. He further submits that challan has been presented and charges have been framed. He has placed on record the custody certificate of the petitioner.

6. 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. The contentions raised by the learned counsel for the petitioner, which have been refuted by the learned State counsel regarding the total weight of the contraband, is totally a matter of evidence and thus, it would lie in the domain of the trial Court. The custody certificate would reflect that the petitioner has

suffered incarceration of 09 months & 28 days as on 23.04.2025. It further reflects that the petitioner has no criminal antecedents.

7. 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.'

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. 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.

9. 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.

10. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

25.04.2025

Parveen kumar

**(RAJESH BHARDWAJ)
JUDGE**

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