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

CRM-M-47601-2024

Date of decision : 29.01.2025

Asad @ Asad Hassan @ Nishu**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Chandra Shekhar Singh, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.0052 dated 03.03.2023, under Section 22 of NDPS Act, 1985 registered at Police Station City Rajpura, District Patiala.

2. Succinctly the facts of the case are that the police party while on patrolling on 03.03.2023, saw a young person coming from the side of Damanheri Gate (Fatak) holding one heavy transparent polythene in his right hand, the tablets in the polythene, could be seen. On seeing the Police, he got perplexed and thus, he was stopped. On asking, he disclosed his name as Asad Hassan @ Nishu. It was suspected that in the polythene envelope he was carrying there may be some intoxicant substance thus, the offer to search the bag being carried by him was given to him under Section 50 of the NDPS Act and on search of the polythene envelope, total 5220 tablets marked as Diphenoxylate Hydrochloride & Atropine Sulphate Tablets IP Lomotil were recovered. He failed to produce any



licence for possession of the contraband and thus, FIR was registered and the petitioner was arrested on the spot. Samples were taken and sent to the Forensic Science Laboratory. On completion of the investigation, challan was presented. Thereafter, the petitioner approached the Ld. Judge, Special Court, Patiala for grant of bail, however, after hearing both the sides, the same was declined by the Judge, Special Court, Patiala vide order dated 30.10.2023. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery was effected from the petitioner at a public place, however, no independent witness from the public was joined by the police party. He submits that there is gross violation of mandatory provisions of Section 50 of NDPS Act. He submits that the petitioner is behind bars from the last about two years, however, there is no progress in the trial. He submits that the petitioner has no criminal antecedents and thus, in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that on due compliance of the mandatory provisions of the NDPS Act, the recovery was effected from the petitioner. He submits that the recovery effected from the petitioner was duly established from the FSL report and the same was found to be weighing 328.86 grams of Diphenoxylate Hydrochloride & Atropine Sulphate, which is a commercial quantity. He submits that thus provisions of Section 37 of NDPS Act, are attracted. He, on instructions, further submits that out of 11 prosecution witnesses, 02 have



been examined so far. He has produced the custody certificate of the petitioner in the Court. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

5. On hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested on 03.03.2023. On the search of the polythene envelope tablets make Diphenoxylate Hydrochloride & Atropine Sulphate, were recovered which weight 328.86 grams. The custody certificate produced would show that the petitioner is behind bars from last 1 year, 10 months and 24 days as on 29.01.2025. It further reflects that petitioner has no criminal antecedents as he has never been involved in any other case. There is no gain saying that speedy trial is the fundamental right of every accused, however, out of 11 prosecution witnesses, 02 witnesses have been examined till date.

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 the 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 and the co-accused of the petitioner has already been granted the concession of regular bail by this Court. 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. 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 Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

29.01.2025

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(**RAJESH BHARDWAJ**)
JUDGE

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