

Buprenorphine injections was taken and sent to FSL. On receiving the FSL report, challan was presented. On framing of charges, the trial commenced. The petitioner approached the Court of Ld. Judge, Special Court, SAS Nagar 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 29.03.2023. Thereafter, he approached this Court by way of filing petition CRM-M-52962-2023, which was dismissed as withdrawn on 12.12.2023 (Annexure P-3) and CRM-M-35877-2024, which was dismissed for want of prosecution on 25.10.2024 (Annexure P-4). Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present 3rd petition.

3. Ms. Kamlesh, Advocate puts in appearance on behalf of the petitioner with No-objection from the earlier counsel. She has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. She submits that the alleged recovery has been effected from a public place, however, no independent witness has been joined. She submits that there is gross violation of Section 50 of the NDPS Act. She submits that the petitioner has no criminal antecedents as he was never involved in any other case. She submits that the petitioner is behind bars in the present case since the date of his arrest i.e. 21.12.2022 but till date, prosecution has not been able to conclude the trial. She submits that speedy trial is the fundamental right of every accused irrespective of the gravity of the offence. She 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 counsel for the petitioner. She submits that as per FSL report,

Buprenorphine Hydrochloride was recovered from the petitioner and total weight of 175 injections comes out to be 350 ml, which is very heavy commercial quantity and 198 injections of 10 ml. each of Pheniramine Maleate have also been recovered from the petitioner, which does not fall in any of the Schedules attached to the NDPS Act. Thus, provisions of Section 37 of the NDPS Act are attracted. On instructions, she submits that out of total 10 prosecution witnesses, 03 witnesses have been examined so far. She 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 petitioner is behind bars since the date of his arrest i.e. 21.12.2022 and till date only 03 prosecution witnesses have been examined out of total 10 witnesses. Custody certificate produced by the State would show that he has suffered incarceration of 02 years, 06 months and 28 days as on 23.07.2025. However, it further reflects that the petitioner is not involved in any other case. The recovery made from the petitioner is 175 injections of 2 ml. each of Buprenorphine Hydrochloride having total weight of 350 ml. which is commercial quantity and 198 injections of 10 ml. each of Pheniramine Maleate, which does not fall in any of the Schedules attached to the NDPS Act.

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 trial of the case is likely to take sufficient time. As per law settled, speedy trial is the right of every accused. The Hon’ble Supreme Court in ***Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya Vs. National Investigation Agency, 2022(1) SCC 695*** has held as under:

“Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While

deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

8. The Hon’ble Supreme Court in a recent decision dated 03.07.2024 in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra***, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India.

9. The veracity of the allegations and counter 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.

10. 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.

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

24.07.2025

Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

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