



CRM-M-2389-2024

1

237 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-2389-2024

Date of decision : 06.05.2025

Nitish Kumar

.....Petitioner

versus

State of Punjab

..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab assisted by  
ASI Charanjit Singh.

**RAJESH BHARDWAJ, J. (Oral)**

1. Present second petition has been filed by the petitioner praying for grant of regular bail in case FIR No.40 dated 01.05.2020, under Sections 22(C), 27-A of NDPS Act, 1985 and Sections 29 of NDPS Act was added lateron, registered at Police Station Ganie Ke Bangar, District Batala.

2. Succinctly the facts of the case are that the police on 01.05.2020, received a secret information to the effect that 03 young persons on 02 different motorcycles were involved in carrying out the business of narcotic substance and they were bringing a huge quantity of narcotic substances. If barricading is laid, then they could be arrested along with contraband. On receiving the secret information, the raiding team was constituted and the barricading was laid by the police party wherein two motorcycles were seen coming at the place disclosed. The riders on seeing the police tried to turn the motorcycles, however, they were apprehended. The driver of one of the motorcycle disclosed his name to be Nitish Kumar (petitioner) S/o Amit Kumar and the driver of other motorcycle disclosed his name as Sandeep Kumar S/o Balbir Kumar. The person riding pillion disclosed his name as Rahul Kumar S/o Dipan



Kumar. They were carrying a plastic bag and thus, suspected to be carrying some narcotic substance in the same. On giving the offer, the search of the bags were conducted and on conducting the search total 13075 tablets which includes the contraband Alprazolam and Tramadol, were recovered from them. They failed to produce any licence for possession of the contraband and thus, FIR was registered and they were arrested on the spot. On registration of FIR, investigation commenced. Samples taken were sent to the FSL. On conclusion of investigation, challan was presented and on framing of charges, trial commenced. As per FSL report received, the contraband recovered contained 513.75 grams of Alprazolam and 3222 grams of Tramadol, which falls under the commercial quantity. Thereafter, the petitioner approached the Ld. Judge, Special Court, Gurdaspur for grant of bail, however, after hearing both the sides, the same was declined by the Learned Judge, Special Court, Gurdaspur vide order dated 12.12.2023. Aggrieved by the same, the petitioner earlier approached this Court by way of filing of CRM-M-16750-2020, which was disposed of by granting interim bail to the petitioner vide order dated 15.07.2020 to await the report of FSL. Thereafter, the petitioner was declared a proclaimed person vide order dated 05.09.2022, however, he was again arrested on 29.07.2023 and since then he is behind bars. Hence, petitioner is before this Court by way of filing the present second petition.

3. It has been contended by counsel for the petitioner that the FIR has been registered on the basis of secret information, however, there is a violation of Sections 42 and 50 of the NDPS Act. He has submitted that the alleged occurrence in the present case is of the time, when the pandemic COVID-19 was prevalent, however, no FIR under Section 188



of IPC was registered and thus, the FIR registered in itself is doubtful. He submits that in all there are 04 accused out of which, 02 accused are on bail. He submits that though the petitioner was declared a proclaimed person vide order dated 05.09.2022, however, thereafter he was arrested on 29.07.2023 and since then he is behind bars. It is submitted that the petitioner though is involved in 02 more cases, however, in one of them he is on bail. He submits that the petitioner is behind bars from last about 02 years, but the trial has still not been concluded.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that out of 13075 intoxicant tablets recovered, 11610 tablets were recovered from the petitioner. He submits that both the contrabands recovered falls under the commercial quantity and thus, provisions of Sections 37 are attracted in the present case. He submits that petitioner was declared a proclaimed person for about a year and thus, his case is not at par with co-accused, namely, Rahul Kumar, who has already been granted bail by this Court vide order dated 06.02.2025. He, on instructions, has submitted that out of 13 prosecution witnesses, 07 witnesses have been examined. He has produced the custody certificate of the petitioner on record.

5. On hearing counsel for the parties and perusing the record, it is inferred that the occurrence in the present case had took place during the lockdown period on account of COVID-19. The petitioner was granted the interim bail vide order dated 15.07.2020, to await the FSL report, however, thereafter, he was declared a proclaimed person vide order dated 05.09.2022 and thereafter on 29.07.2023 he was again arrested and since then he is behind bars. However, 02 of the co-accused are already on bail. Custody certificate would show that he has completed an incarceration of



01 year, 11 months and 17 days as on 05.05.2025. It is submitted that petitioner is involved in 02 more cases. However, in one of the case, he has undergone the sentence and in one he is still in custody.

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"<sup>22</sup> (also see*



*Donald Clemmer's 'The Prison Community' published in 1940<sup>23</sup>). 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. Co-accused, Rahul Kumar, has already been granted 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.

8. In case the bail bonds are not furnished by the petitioner during the period of 07 days from today, then his further custody period after one week will not be counted in the present case.

( **RAJESH BHARDWAJ** )  
**JUDGE**

**06.05.2025**

*ps-I*

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