

driver of the vehicle got perplexed and tried to escape but he was apprehended by the police party. On asking, he disclosed his name Shamsheer Singh @ Shera (petitioner). He was suspected to be carrying on some contraband and thus, search of the car was conducted. On conducting the search of the car, a blue-red coloured satchel bag was found under the driver's seat of the vehicle. On checking of the same, total 4 Kg. heroin was found therein. 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 Ld. Judge, Special Court, Amritsar, 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 23.02.2024. Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present petition.

3. It has been contended by learned counsel for the petitioner that the petitioner has been falsely and frivolously roped in the present case. He further submits that admittedly the case is based on the secret information but there is violation of Section 42 of the NDPS Act. He further submits that there is violation of Section 50 of the NDPS Act as well in carrying out the search. He further submits that the recovery as alleged has been effected from a public place but no independent witness has been joined. He submits that the petitioner has no criminal antecedents as he has never been involved in any other case except the present one and thus, the false implication of the petitioner is writ large. He submits that the petitioner has completed incarceration of 02 years, 11 months and 06 days. He, thus, submits that in view of 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. He has submitted that on due compliance of Sections 42 and 50 of the NDPS Act, total recovery of 4 Kg. heroin was effected in the present case, which falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. He submits that the petitioner was specifically named in the secret information. He further submits that out of total 18 prosecution witnesses, 04 witnesses have been examined. He has placed on record custody certificate of the petitioner.

5. 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. Out of total 18 prosecution witnesses, 04 witnesses have been examined. The custody certificate would reflect that the petitioner has suffered incarceration of 02 years, 11 months and 06 days as on 06.08.2025. It further reflects that the petitioner is involved in one another case, however, he has already been released in that case.

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. 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 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.

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.

07.08.2025

Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

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