



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

**CRM-M No.31611 of 2024  
Date of Decision: 15.02.2025**

**Nishan Singh @ Bhau**

**..... Petitioner**

**Versus**

**State of Punjab**

**..... Respondent**

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

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Present: Mr. Lekh Raj Sharma, Advocate;  
Mr. Abhishek Sharma, Advocate and  
Mr. Veneet Sharma, Advocate  
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

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

1. Present petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.318, dated 14.10.2023, under Sections 21-C, 25, 29, 61 & 85 of NDPS Act, 1985, registered at Police Station STF, District SAS Nagar (Mohali) (Annexure P-1).

2. Succinctly the facts of the case are that the police party on 14.10.2023 received a secret information to the effect that Lovedeep Singh son of Ranjit Singh, Ranjit Singh son of Gurnam Singh and Nishan Singh @ Bhau i.e., the petitioner have connections with the smugglers of Pakistan and on that day also they were going on motorcycle along with the contraband and in case of raid, they could be apprehended along with the contraband. On finding the information reliable, the raiding party was constituted and the place disclosed was raided. The police party found 02



youths were standing and on asking, they disclosed their names as Lovedeep Singh and Nishan Singh @ Bhau. On suspicion, they were given the notice to be searched. The bag carried by Lovedeep Singh was searched and on searching the same, the contraband recovered was found to be heroin and after weighing the same found to be 2 Kg 500 grams. Both the accused failed to produce any licence regarding the conscious possession of the same and thus, they were arrested on the spot. On registration of the FIR, the investigation commenced. Samples taken were sent to the FSL. On completion of the investigation, challan was presented and on framing of the charges, the trial Court commenced the trial. The petitioner approached the Court of learned Judge (Special Court), Amritsar praying for the grant of bail. However after hearing both the sides finding no merit in the same, the learned Judge (Special Court), Amritsar declined the petition filed by the petitioner vide his order dated 10.05.2024. Hence being aggrieved the petitioner is before this Court by way of filing the present petition praying for the grant of regular bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He has submitted that case of the prosecution is based on the secret information, however there is a violation of mandatory provisions of Section 42 of NDPS Act. He has submitted that the search has been carried out in the present of DSP Sikander Singh, however from the appreciation of prosecution case, there is a violation of mandatory provisions of Section 50 NDPS Act as well. He has submitted that no independent witness has been associated by the prosecution for the alleged recovery having been made. He has submitted that the petitioner



is a sports person, who has no criminal antecedents as he has never been involved in any other case except the present case. He has submitted that since the date of his arrest, the petitioner is behind bars, however there is no material progress in the trial. He has submitted that only in order to implicate the petitioner in a serious case, the allegations regarding his connections with the smugglers in Pakistan have been made and thus the case has been planted on the petitioner. He has submitted that in the facts and circumstances, the petitioner deserves to be granted bail.

4. *Per contra*, learned counsel for the State has opposed the submissions made by counsel for the petitioner. He, on instructions from SI Harpal Singh, has submitted that the petitioner was duly named in the secret information and on conducting the raid, he was arrested on the spot. He has submitted that the recovery has been effected from the bag of co-accused, however the petitioner was very much present at the time of recovery. He has submitted that the recovery effected from the co-accused of the petitioner is 2 Kg 500 grams, which is commercial in nature and thus, the provisions of Section 37 NDPS Act are also attracted. He has produced the custody certificate of the petitioner and has submitted that out of 15 prosecution witnesses, only 05 have been examined as on date. He has thus submitted that there being no prima facie case, the petition deserves to be dismissed.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is apparent that FIR in the present case was registered on the basis of secret information. Though the petitioner has been named in the FIR, however the recovery in the present case has been effected from



the bag being carried out by co-accused, Lovedeep Singh. Custody certificate produced by the learned State counsel shows that the petitioner has undergone incarceration of 01 year, 03 months and 27 days as on 14.02.2025. The custody certificate further reflects that the petitioner has no criminal antecedents as he has never been involved in any other case. Needless to say that every accused has a fundamental right of speedy trial. The prosecution has been able to examine only 05 witnesses till date. The alleged recovery of contraband is 2 kg 500 grams that falls under the commercial quantity. As submitted before this Court that no independent witness has been joined.

7. After perusal of the order passed by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (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,*

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.*

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.'*

8. 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.”*

9. 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.

10. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

11. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of 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 trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

15.02.2025

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**(RAJESH BHARDWAJ)  
JUDGE**

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