

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-30981-2021

Date of decision :-29.11.2022

Sakeel

...Petitioner

Versus

State of Punjab

...Respondent

CRM-M-47525-2021

Rupesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sarfraj Hussain, Advocate for the petitioner
in CRM-M-30981-2021.

Mr. Jashandeep Singh Sandhu, Advocate for the petitioner
in CRM-M-47525-2021.

Mr. Gaurav Garg Dhuriwala, Senior DAG, Punjab,
for the respondent-State in both cases.

SUVIR SEHGAL, J.

This order shall dispose of both the above-mentioned petitions bearing CRM-M-30981-2021 titled as **Sakeel versus State of Punjab** and CRM-M-47525-2021 titled as **Rupesh Kumar versus State of Punjab** as both the petitioners are accused in FIR No.95 dated 25.02.2020 lodged at Police Station City Barnala, District Barnala, for offences under Sections 22, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the NDPS Act”) and have approached this Court by way of separate petitions seeking grant of regular bail under Section 439 of Cr.P.C.

For the sake of brevity, factual position is being taken from CRM-M-47525-2021, Rupesh Kumar Versus State of Punjab, who has approached this Court for the second time.

Case of the prosecution is that FIR has been registered on the basis of information received that Mohan Lal is indulging in sale of intoxicating substance in the area around the city of Barnala that are procured from outside the State. FIR was registered, Mohan Lal was apprehended on 26.02.2020 and recovery of 80 strips of *alprasafe* and 120 strips of *etolam*, total of 2000 intoxicating tablets, were recovered from him. His interrogation, led to a number of other arrests and a huge recovery from other accused. Rupesh Kumar and Sakeel were arrested.

Counsel for the petitioners have urged that length of custody of the petitioners and the fact that trial is not likely to conclude in the near future as a large number of witnesses have to be examined, entitle the petitioners to be released on bail. It has been submitted that no recovery has been effected from the conscious possession of the petitioners and the mandatory provisions of the NDPS Act have not been complied with during their search and seizure.

Opposing the petition, learned State counsel, by making a detailed reference to the status report filed by way of affidavit dated 26.05.2022 submitted by Deputy Superintendent of Police (D), Barnala, District Barnala, copy of which has been taken on record in connected CRM-M-21873-2021, has submitted that bar under Section 37 of the NDPS Act is attracted as commercial quantity of contraband has been recovered and the petitioners are not entitled to be released on bail. He has also submitted that petitioner, Rupesh Kumar, had approached this Court on an earlier occasion and his petition was declined by this Court by order dated 23.07.2021 and SLPs preferred there-against has been dismissed by the Supreme Court vide orders dated 28.04.2022 and 06.05.2022.

He submits that the trial is going on and some prosecution witnesses have been examined. He has placed reliance upon the judgments of the Supreme Court in *Narcotics Control Bureau Versus Mohit Aggarwal* 2022 (3) R.C.R. (Criminal) 985; *Union of India (NCB) Etc. Versus Khalil Uddin etc.* 2022 (4) R.C.R. (Criminal) 984 and *Union of India through Narcotics Control Bureau Versus Md. Nawaz Khan* (2021) 10 SCC 100.

I have considered the respective submissions of counsel for the parties.

At the outset, reference deserves to be made to the status report filed on behalf of the respondent, wherein the role of each of the two petitioners has been mentioned and is reproduced as under:-

“8.2. *Petitioner Sukeel (Petition no. CRM-M no. 30981 of 2021)*

That in the instant case petitioner Sukeel was nominated as accused on 25.03.2021 during investigation on the basis of interrogation of co-accused Imran Khan from whose possession 1,75,000 intoxicant tablets and capsules, 3000 clean kits and 16 Lakhs drug money were recovered.

That the petitioner was arrested on 31.03.2021 through production warrants. No recovery was effected from the said petitioner in this case. That apart from the instant case the petitioner Dhirendra Singh Rathore is involved in the following case also:-

1) FIR no. VIII (IO)/16/NCV/JZU/2020 u/s 8,21,22,27,29 NDPS Act, PS Jodhpur, (Under-trial);

8.3. *Petitioner Rupesh Kumar (Petition no. CRM-M no.25031 of 2020)*

Petitioner Rupesh Kumar was nominated as accused in this case by non- petitioner Naresh Mittal @ Rinku from whose possession, 2500 tablets of Clovidol, 3200 tablets of Etolam, 1000 loose tablets, Rs.5 lacs as drug money and one Innova car were recovered by the police on 28.02.2020.

The petitioner was arrested on 11.03.2020 and his police remand was obtained by ASI Sharif Khan, the arresting cum Investigating officer.

On 14.03.2020, during his interrogation petitioner Rupesh Kumar disclosed that he used to purchased intoxicant tablets from Naresh Mittal and after arrest of Naresh Mittal he had hidden the intoxicant tablets near Wall of Kapah Mandi, Barnala and in furtherance of his disclosure statement petitioner Rupesh Kumar got recovered 184 strips of Clovidol 100 SR, each strip contained 10 tablets total 1840 tablets and 160 strips of Prozolam-0.5 each strip contained 10 tablet total 1600 total 3440 tablets from the specified place u/s 27 Evidence Act, which were hidden by him under the soil. The petitioner could not produce any license or permit for possessing the said quantity of the Narcotics Drugs/ Psychotropic Substances which fall under the category of commercial quantity.”

It has been submitted in the status report that during investigation, the accused revealed the names of the present petitioners and their interrogation led to recoveries. As per the affidavit filed by the State, in addition to drug money of Rs.1,72,60,000/- and five vehicles, a huge quantity of 45,39,470 prohibited tablets, capsules and injections have been recovered from the 17 accused, who have been arrested. It has been stated in the affidavit that all the accused formed part of a gang and were working hand in glove with each other while trafficking in commercial quantity of drugs and were also found to have been involved in a number of other cases registered against them under the NDPS Act.

From the above, it is evident that both the petitioners are a vital link in the chain of supply and sale of drugs. Although, no recovery has been effected from the accused, Sakeel, but considering the overall recoveries effected and the criminal past, this Court is of the view that in the face of stringent provision of Section 37 of NDPS Act, no relief can be granted.

Still further, it may be noticed that petitions filed by some of the co-accused including accused, Rupesh Kumar, has been rejected by this Court on 23.07.2021. SLPs preferred by some of the co-accused against this order have been dismissed by the Supreme Court and while dismissing SLP (Criminal) 9705-2021, Apex Court passed the following order:-

“We see no reason to interfere. The Special Leave Petition is dismissed.

The Trial Court may do well to expedite the process and conclude the proceedings as early as possible.

Pending applications, if any, shall stand disposed of.”

State counsel has made a statement that the trial has started and pursuant to the direction passed by the Supreme Court, prosecution witnesses are being examined. Keeping in view the huge recovery of drugs, drug money and vehicles effected from the 17 accused, this Court is not inclined to accept the prayer made in the petitions.

Finding no merit, both the petitions are hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

29.11.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No