

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(209)

CRM-M-5225-2023
Date of decision:- 07.02.2023

Jarnail Singh @ Jerry @ Jerry

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Laghuinder Singh Sekhon, Advocate
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No.208 dated 11.10.2019, registered for offences under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), at Police Station Sangat, District Bathinda, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered after two persons, who were travelling on a motorcycle, were stopped on suspicion and recovery of 75 vials of Wincirex and 64 strips of Carisoma was effected. Both the persons were arrested at the spot.

Counsel for the petitioner contends that although the entire recovery is alleged to have been effected from the petitioner, but the prohibited substance belonged to the co-accused, Avtar Singh, who was the owner of the motorcycle and was driving it. Counsel submits that the petitioner is in custody since the registration of the FIR, but the progress at

of trial is tardy. He submits that earlier petitions, preferred by the petitioner, were withdrawn vide orders dated 28.10.2020 and 30.08.2022, Annexure P-4 and P-5, respectively. He has made a reference to order dated 16.08.2021 passed by this Court, Annexure P-2, whereby co-accused, Avtar Singh, has been released on bail. Reliance has been placed by him upon order dated 25.01.2023 passed by the Hon'ble Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh*** to assert that as the petitioner enjoys a clean past, he deserves to be released from confinement.

Per contra, learned State counsel, upon instructions, has opposed the petition and has submitted that as the contraband recovered from the petitioner falls within the ambit of commercial quantity, bar under Section 37 of the NDPS Act is attracted. He submits that charge was framed on 07.01.2020 and three out of thirteen witnesses have been examined. He has filed Custody Certificate dated 04.02.2023, which is taken on record.

I have heard counsel for the parties and considered their respective submissions.

Hon'ble Supreme Court in ***Dheeraj Kumar Shukla's*** case (supra) has held as under:-

“..... It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

In the opinion of this Court, the observations of the Apex Court

could be fully applicable to the facts of the present case. Not only does the petitioner have clean antecedents, but the trial is also at a nascent stage and the petitioner has been in detention for almost forty months.

This Court, is therefore, of the view that petitioner deserves to be temporarily released on bail during the pendency of the trial.

Accordingly, without advertng to the merits or demerits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned. Trial Court/ Duty Magistrate concerned may impose any other condition it deems appropriate.

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

(SUVIR SEHGAL)
JUDGE

07.02.2023

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No