

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

203

CRM-M-9954 of 2022

Date of decision:22.05.2023

Parvesh Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl.A.G.Punjab.

SUVIR SEHGAL, J. (Oral)

1. This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973, seeking grant of regular bail to the petitioner in case bearing FIR (Annexure P-1):-

FIR No.	Dated	Police Station	Section
111	24.10.2019	Bhikhiwind, District Tarn Taran	22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”).

2. Case of the prosecution is that FIR (Annexure P-1) was registered when two youths, who were travelling on a motorcycle were intercepted on suspicion. On seeing the police party, they threw some polythene bags on the ground. Both the youths were apprehended. Polythene bags were found to be containing 1100 intoxicating tablets.

3. Counsel for the petitioner contends that no recovery has been

effected from the person of the petitioner. It is his argument that mandatory provisions of the NDPS Act have not been complied with at the time of alleged search and seizure. He submits that allegation against the petitioner is that the petitioner had thrown a bag containing 900 tablets which on weighing was found to contain 338 grams of Tramadol. By referring to the report of Medical Board of PGIMER, Chandigarh, counsel submits that the petitioner is suffering from multiple osteomas (benign tumours of skull bone without involvement of brain) and he has been operated upon for the said condition. He has placed reliance upon the judgments of Hon'ble Supreme Court in **SLP (Crl.) No(s).6690 of 2022 titled as Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, decided on 25.01.2023; SLP(Crl.) No(s).1166 of 2023 titled as Chet Ram @ Ram Veer Vs. Union of India, decided on 15.03.2023 and SLP(Crl.) No(s).3221 of 2023 titled as Hasanujjaman and others Vs. The State of West Bengal, decided on 04.05.2023** and asserts that the petitioner deserves to be enlarged on bail as he is not involved in any other criminal case under the NDPS Act. He submits that although the petitioner has been named as an accused in FIR under Section 304-B IPC, but the allegations are primarily against his brother, whose wife had expired. Counsel submits that the petitioner has been ordered to be released on bail in this FIR by order dated 14.03.2023 passed by the learned Additional Sessions Judge, but he continues to be in detention as he has not furnished the bail bonds.

4. Per contra, State counsel upon instructions from ASI Lakbir Singh, has opposed the petition by submitting that as commercial quantity of

intoxicating substance has been recovered from the petitioner, rigour of Section 37 of the NDPS Act will apply. State counsel submits that the petitioner was the owner of the motorcycle he was driving. He submits that recovery of 200 tablets of contraband was effected from the co-accused, Gurdeep Singh. As per his instructions, 05 out of total 10 prosecution witnesses have been examined.

5. I have considered the submissions made by counsel for the parties.

6. 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 through the charges have been framed.”

7. Petitioner is in custody for the last twenty six months and has medical issues. There is also a little possibility of an early conclusion of the trial. Noticing these factors as well as the fact that the petitioner is not accused of any other offence under the NDPS Act, this Court is inclined to accede to the prayer made in the petition.

8. Without adverting to the merits or demerits of the arguments addressed, petition is allowed and petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
9. It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 22, 2023
savita

(SUVIR SEHGAL)
JUDGE

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