

CRM-M-9115-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204)

CRM-M-9115-2023
Date of decision:- 02.05.2023

Vijay Chaudhary

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. Status report has been filed by way of an affidavit of Deputy Superintendent of Police, Tohana, which is taken on record.
2. This is the fourth petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
169	21.04.2020	City Tohana, District Fatehabad	21-C of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), Section 25 of the Arms Act, 1959 and Sections 188 and 269 of IPC

3. Case of the prosecution is that a car with three occupants was intercepted on the basis of prior information and recovery of 938 grams of *heroin*, arms and ammunition was made. The vehicle was being driven by Pardeep, Vijay Chaudhary, present petitioner, was sitting on the navigator seat and Sourabh @ Channa was sitting on the rear seat.

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4. Counsel for the petitioner urges that the petitioner is working as a Constable with Ghaziabad PAC, Uttar Pradesh and no recovery has been effected from him. Counsel for the petitioner contends that the petitioner was an innocent traveller in the car driven by co-accused, Pardeep, and he has has been falsely implicated. He submits that the recovery of arms and ammunition has been effected from co-accused, Pardeep and Sourabh @ Channa, who have been released on default bail by this Court vide orders dated 17.08.2021 and 17.11.2021, Annexures P-4 and P-5, respectively. By placing reliance upon the judgment of the Hon'ble Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, decided on 25.01.2023, Annexure P-9, he submits that as the petitioner has clean antecedents and has been languishing in custody for a long period, he deserves to be released on bail as trial is likely to take a long time to conclude.

5. *Per contra*, learned State counsel, upon instructions received from ASI, Jai Veer, has opposed the petition. By referring to the status report, he submits that the petitioner and the co-accused were hand in glove and they were involved in cross-border smuggling while travelling in police uniform. As per his instructions, none out of the thirty one prosecution witnesses have been examined.

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

7. In ***Dheeraj Kumar Shukla's*** case (supra), it has been held as under:-

“3. 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.”

8. Petitioner is in custody for the last more than thirty six months, no recovery has been effected from his person and trial is at a nascent stage. In view of the above reproduced observations of the Supreme Court, this Court is of the opinion that the petitioner, who has an unblemished past, deserves to be enlarged on bail.

9. Without adverting 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.

10. 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

02.05.2023
Kamal

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