

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

215

CRM-M-9938-2023 (O&M)

Date of Decision: 22.05.2023

AFTAB ALIAS MD. AFTAB

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Abhinav Sood, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

HARNARESH SINGH GILL, J.(Oral)

Through this second petition, the petitioner seeks regular bail in case bearing FIR No.45 dated 27.03.2021, registered at Police Station Bicchor, Tehsil and District Nuhunder, under Section 20 of the NDPS Act, the first one having been dismissed as withdrawn on 13.07.2022.

Learned counsel for the petitioner submits that the petitioner has been in custody since 27.03.2021; that the alleged recovery of commercial quantity contraband has already been effected; that there is no other case registered and/or pending against the petitioner, at least of the similar nature and that 14 prosecution witnesses are yet to be examined. He further submits that the co-accused, who was apprehended at a later stage, has already been granted the concession of regular bail and that the motorcycle in question does not belongs to the petitioner.

In support of his contentions, learned counsel for the petitioner relies upon the order dated 25.01.2023 passed by the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No.6690-2022 titled as 'Dheeraj Kumar Shukla vs. State of Uttar Pradesh' and order dated 22.08.2022 passed in Special Leave to Appeal (Crl.) No.5530-2022 title as Mohammad Salman Hanif Shaikh vs State of Gujarat.

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. He, however, submits that the recovery effected in the present case falls under the commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in the case of commercial quantity. He further submits that material prosecution witnesses are yet to be examined and that the co-accused, somehow managed to escape from the spot and thus, the petitioner does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

Though the recovery allegedly effected in the present case falls under the commercial quantity, yet the fact remains that the petitioner has been in custody since 27.03.2021. Co-accused has already been enlarged on bail. Most of the prosecution witnesses are yet to be examined. In such circumstances, trial of the case would take a long time to conclude. There is no other case registered and/or pending against the petitioner, at least of the similar nature.

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

'3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. 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.

4. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

5. It is made clear that in addition to the conditions that may be imposed by the Trial Court, the petitioner shall be required to appear before the Trial Court on every date of hearing. In case the petitioner is found to be involved in future in any other similar case, the respondent – State shall be at liberty to seek cancellation of bail granted to him by this Court.

6. The Special Leave Petition stands disposed in the above terms.....'.

In view of the above and without commenting anything on the merits of the case, lest it should prejudice the case of either side, 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 learned trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

22.05.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

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