

CRM-M-15732-2022 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(102+201) CRM-M-15732-2022 (O&M)
Date of decision:- 18.05.2023

Raj Kumar @ Raju ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Randeep Singh Waraich (Rana), Advocate
for the applicant-petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

CRM-21682-2023

1. Application is allowed as prayed for.
2. Copy of FIR bearing No.97 dated 04.05.2022 and FIR No. 295 dated 20.11.2022 are taken on record as Annexures P-7 and P-8, respectively.

Main case

1. This is the second 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
52	31.05.2020	Rureke Kalan, District Barnala	21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short “the NDPS Act”)

2. Case of the prosecution is that on the basis of secret information, a car was intercepted and recovery of 1.5 kg *heroin* was effected. The driver of the car identified himself as Gurinder Singh @ Goldy and Raju Kumar @ Raju, present petitioner, was sitting on the navigator seat with the contraband on his lap.

3. Counsel for the petitioner submits that the petitioner has been falsely implicated and no recovery, as alleged, was effected from him. He submits that besides violation of mandatory provisions of the NDPS Act at the time of conducting search, even the seizure memo prepared at the spot does not bear the signature of the accused-petitioner. Counsel submits that the first petition, preferred by the petitioner, was withdrawn in July, 2021, but since then there has been practically no progress in the trial. Placing reliance upon the judgments of the 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 and ***Special Leave to Appeal (Crl.) No.1166 of 2023*** titled as ***Chet Ram @ Ram Veer Versus Union of India***, decided on 15.03.2023, counsel asserts that the petitioner deserves to be released on bail. Still further, by inviting the attention of the Court to Annexures P-7 and P-8, counsel submits that both the FIRs have been registered on false allegations, while the petitioner was in custody.

4. Per contra, State counsel has opposed the petition, upon instructions received from ASI, Des Raj and submits that as the recovery effected is commercial in nature, provisions of Section 37 of the NDPS Act are attracted. By making a reference to the affidavit dated 15.09.2022 of Deputy Superintendent of Police, Sub-Division Tapa, District Barnala,

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State counsel submits that on the basis of petitioner's disclosure statement, cash of Rs.2,87,000/- was recovered from his residence. As per his instructions, charge was framed on 18.01.2021 and three out of twenty prosecution witnesses have been examined. He has opposed the petition by making a reference to the criminal past of the petitioner.

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

6. 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.”

7. In ***Chet Ram @ Ram Veer*** case (supra) noticing the detention period of 3 ½ years and involvement of petitioner in another FIR under the NDPS Act, Hon'ble Supreme Court released the accused on bail.

8. In so far as the petitioner is concerned, he has been in detention for the last more than thirty five months. Despite the fact that the charge was framed almost two and half years earlier, only three prosecution witnesses have been examined. In so far as his antecedents are concerned,

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both the FIRs have been registered against him while he was in custody. FIR, Annexure P-8, under the NDPS Act has been lodged against him on the basis of a disclosure statement of his wife from whom contraband of non-commercial quantity was allegedly recovered. In the opinion of this Court, the parameters laid down by the Supreme Court in the above-noticed judgments are fulfilled.

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.

18.05.2023
Kamal

(SUVIR SEHGAL)
JUDGE

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