

CRM-M-20305-2021 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(211) CRM-M-20305-2021
Date of decision:- 06.07.2023

Jagsir Singh @ Seera ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Jasvir Singh Dhaliwal, Advocate for the petitioner.
Mr. Arun Luthra, DAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. Mr. Jasvir Singh Dhaliwal, Advocate has put in appearance on behalf of the petitioner and has filed his Vakalatnama with no objection from the previous counsel, which is taken on record.
2. Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
13	16.01.2021	Sadar Mansa, District Mansa	22, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

3. Version of the prosecution is that FIR, Annexure P-1, has been registered when on the basis of suspicion, a motorcyclist was intercepted, who identified himself as Balwinder Singh @ Bindri and recovery of 500 tablets of *Tramadol* was effected from him.

4. Counsel for the petitioner contends that the petitioner is not named in the FIR and has been nominated as an accused on the basis of disclosure statement of the main accused, who has been released on bail by the learned Special Court, Mansa vide order dated 18.03.2021 as the total weight of the intoxicating substance recovered from him fell within the ambit of non-commercial quantity. Counsel submits that although recovery of 1500 tablets of *Tramadol*, weighing 493.62 grams, has been effected from the petitioner, but due to the tardy progress of the trial, petitioner is languishing behind bars since 23.01.2021. Counsel asserts that the petitioner, who has a clean past, deserves to be enlarged on bail. By making a reference to interim order dated 29.05.2023, he submits that petitioner's son unfortunately expired in May, 2023 and he was released on interim bail. He submits that petitioner did not misuse the concession and duly surrendered within the time granted by this Court.

5. *Per contra*, learned State counsel, upon instructions received from SI, Jagsir Singh, has opposed the petition. He submits that as commercial quantity of contraband has been recovered from the petitioner, rigor of Section 37 of the NDPS Act will be attracted. On the basis of the Custody Certificate dated 05.07.2023, which has been filed by him, he could not dispute that the petitioner enjoys clean antecedents. As per his instructions, twelve out of twenty seven prosecution witnesses have been examined.

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

7. Hon'ble Supreme Court in *Dheeraj Kumar Shukla's* case (supra), has observed 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 has an unblemished past. He is in detention for the last almost 2 ½ years and there is a little possibility of an early conclusion of the trial. In view of these factors and the judgment of the Supreme Court, this Court has no hesitation in acceding to the prayer made in the petition.

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/Trial Court 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

06.07.2023

Kamal

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