

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

205

CRM-M-19686-2022

Date of decision:22.02.2023

Sunny Kumar @ Sunny

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. S.P.S. Khaira, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

This is the second petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.08, dated 24.01.2019 registered for the offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the NDPS Act”) at Police Station Doraha, District Police Khanna, District Ludhiana, Annexure P-1.

Counsel for the petitioner submits that FIR, Annexure P-1, was registered, when recovery of 35 intoxicating injections containing *Buprenorphine* 2 ml each and 35 injections of *Avil* weighing 10 ml each, were recovered from the petitioner, who was riding a motorcycle alongwith co-accused, Kamal Kumar @ Kamal. Counsel contends that mandatory provisions of the NDPS Act were not complied with. By placing reliance upon order dated 20.12.2021, Annexure P-6, counsel argues that the petitioner is similarly placed as co-accused, Kamal

Kumar @ Kamal, from whom same quantity was allegedly recovered and he has been released on regular bail. Counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in **Dheeraj Kumar Shukla Versus The State of Uttar Pradesh** and urges that as trial is progressing at a snail's pace, petitioner deserves to be released on bail as he is in detention since 25.01.2019.

Per Contra, learned State counsel, upon instructions from ASI Hakam Singh, has opposed the petition and has submitted that as the recovery effected from the petitioner falls in the category of commercial quantity, bar under Section 37 comes into operation. Upon further instructions, he submits that 04 out of 13 prosecution witnesses have been examined. He has also made a reference to the affidavit of Senior Superintendent of Police, Ludhiana dated 10.01.2023.

I have heard counsel for the parties.

Noticing that despite the framing of the charge on 29.05.2019, trial was at an initial stage, this Court by order dated 30.08.2022 directed the Senior Superintendent of Police, Ludhiana to examine the matter and file an affidavit. Although, affidavit dated 10.01.2023 has been filed, but no time frame has been specified in the affidavit within which the prosecution will conclude its evidence. Perusal of the order passed in the case of co-accused, Kamal Kumar @ Kamal, shows that the petitioner is at par with him. Still further, Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)** has observed 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 though the charges have been framed.”

Length of custody of four years, stage of trial and the fact that the petitioner is not involved in any other criminal case under the NDPS Act, are factors which have prevailed with this Court to accept the prayer made in the petition.

Without advertng to the merits or de-merits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.02.2023

sheetal

(SUVIR SEHGAL)
JUDGE

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