

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(203)

CRM-M-20131-2022
Date of decision:- 09.02.2023

Jasbir Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Isha Goyal, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No.225 dated 30.08.2019, registered for offences under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), however, Section 27-A of NDPS Act was added later on, vide General Diary Detail No.29 dated 20.02.2020 at Police Station City Tarn Taran, District Tarn Taran, Annexure P-1.

FIR, Annexure P-1, was registered after a car was intercepted and recovery of 4500 tablets of *Tramadol* along with Rs.2,35,000/- drug money was effected from Jasbir Singh (present petitioner), who was driving the car. Recovery of 7000 tablets of *Clovidol* along with cash of Rs.80,000/- was effected from Kashmir Singh, who was a passenger in the vehicle.

Counsel for the petitioner contends that the petitioner is in custody for the last more than three years and two months and the trial is at an initial stage. By referring to Annexures P-7 to P-9, counsel argues that the petitioner has been falsely implicated. Counsel has contended that mandatory provisions of the NDPS Act have not been complied with at the time of search and seizure. She submits that the earlier two petitions, preferred by the petitioner, were withdrawn vide orders dated 01.07.2021 and 19.08.2021, Annexures P-4 and P-6, respectively, after arguments. Counsel has placed reliance upon the judgment of the Supreme Court in ***SLP (Crl.) No. 6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh*** and submits that the petitioner, who has a clean antecedents, deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions received from ASI, Narinder Jit Singh, has opposed the petition and has submitted that the recovery effected from the petitioner falls within the ambit of commercial quantity and the rigor of Section 37 of the NDPS Act is attracted. She submits that one out of eleven prosecution witnesses have been examined. She has filed Custody Certificate dated 07.02.2023, which is taken on record.

I have heard counsel for the parties.

By order dated 31.08.2022, this Court directed the Senior Superintendent of Police, Tarn Taran to examine the matter and file an affidavit explaining the delay in the leading of evidence by the prosecution. Affidavit dated 13.11.2022 has been filed, wherein it has been submitted as under:-

“8. the charge in the present case has been framed on 08.01.2021, but due to unavoidable circumstances, no witness has been examined in the present case till date. It is submitted that as per the police record, the prosecution witnesses did not appear before the learned Trial Court for the examination due to bona fide reason and they did not avoid the service of the Court at any point of time and keeping in view the delay for examination of prosecution witnesses in the present case, the undersigned has directed to the official witnesses to appear before the learned Trial Court and gave their evidence in the learned Trial Court and now, the next date of hearing before the learned Trial Court is 01.12.2022.”

No explanation has been given for non-examination of witnesses.

Despite the fact that the accused is languishing in detention since the last more than three years and has approached this Court seeking bail, only one prosecution witness has been examined in the last six months. The pace at which the trial is proceeding, is in itself sufficient ground to grant bail to the petitioner.

Apex Court in ***Dheeraj Kumar Shukla's*** case (supra) has 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.”

A perusal of the Custody Certificate, filed by the State, shows that not only the petitioner has been in confinement for the last more than thirty eight months, but also, he has clean antecedents.

Keeping in view the above circumstances, this Court is inclined to accept the prayer made in the petition.

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.

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

09.02.2023
Kamal

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