

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

206 (2 Cases)

CRM-M-25902 of 2022

Date of decision:20.04.2023

Sanju

... Petitioner

Vs.

State of Punjab

... Respondent

CRM-M-31662 of 2022

Saab @ Saabi @ Prem

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.S.Sekhon, Advocate

for the petitioner in CRM-M-25902 of 2022.

Mr. Lokesh Vohra, Advocate

for the petitioner in CRM-M-31662 of 2022.

Mr. Rohit Bansal, Sr. DAG, Punjab.

SUVIR SEHGAL, J. (Oral)

1. This order shall dispose of two petitions, i.e. CRM-M-25902 of 2022 and CRM-M-31662 of 2022 as both the petitioners are approaching this Court for the third time seeking grant of regular bail under Section 439 Cr.P.C., in case bearing FIR:-

FIR No.	Dated	Police Station	Sections
83	13.04.2019	Ferozepur, District Ferozepur	29, 21 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 750 grams of heroin was effected. Disclosure statement of the accused was recorded and two country made pistols, a .32 bore pistol and three live cartridges, have been recovered.

3. Counsel representing the petitioners submit that Saab (petitioner in CRM-M-31662 of 2022) was driving the vehicle, Sanju (petitioner in CRM-M-25902 of 2022) was sitting on the navigator seat and third accused, Sagar was sitting on the rear seat. Counsel contend that mandatory provisions of the NDPS Act, have not been complied with and the petitioners have been falsely implicated. It has been asserted that despite long detention of the petitioners since 17.04.2019, trial has not concluded and they deserve to be released on bail. Reliance has been placed upon the judgment of Hon'ble Supreme Court in **SLP (Crl.) No(s).6690 of 2022 titled as Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, decided on 25.01.2023.**

4. Per contra, State counsel, upon instructions from ASI Gurdev Singh has opposed the petitions and has argued that as the recovery effected from the petitioners falls within the ambit of commercial quantity, bar under Section 37 of the NDPS Act, is attracted. Fresh status report by way of an affidavit of Senior Superintendent of Police, Ferozepur has been filed, which is taken on record. It has been submitted that 09 out of total 13 prosecution witnesses have been examined. In particular, State counsel has opposed the petition filed by accused, Sanju by contending that he is involved in three

other criminal cases, though State counsel could not deny that both the accused are not involved in any other case under the NDPS Act.

5. Countering his submission, Mr.Lokesh Vohra, Advocate submits that accused-Saab, has been acquitted in FIR No.169 dated 16.06.2014 by judgment dated 06.08.2015.

6. I have heard counsel for the parties.

7. Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)** has held 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 through the charges have been framed.”

8. Noticing the fact that custody of the petitioners by now is more than 48 months, stage of trial and that none of the two petitioners is involved in any offence under the NDPS Act, though they are accused of minor offences, this Court is inclined to accept the prayer made in the petitions.

9. Without adverting to the merits or demerits of the arguments addressed, petitions are allowed and petitioners are ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial

Court/Duty Magistrate concerned.

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

April 20, 2023

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>