

CRM-M-27799-2022 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(273) CRM-M-27799-2022
Date of decision:- 31.08.2023

Bhola Ram @ Babbu ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ranbir Singh Sekhon, Advocate for the petitioner.
Mr. Anup Singh, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

1. This is the fourth 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
21	28.02.2021	Guruharsahai, District Ferozepur	21 and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

2. Factual matrix leading to the filing of the present petition is that FIR, Annexure P-1, has been registered on the basis of secret information that Bhola Ram @ Babbu, present petitioner, who is indulging in sale and purchase of intoxicating substance, is coming to village Guruharsahai for the said purpose. A police barricade was set up and the petitioner was apprehended. Recovery of 1020 intoxicating tablets of Clovidol - 100 SR and 20 gm of heroine was effected from him.

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3. Counsel for the petitioner contends that the petitioner has been falsely implicated. He submits that the petitioner was never apprehended from the spot as has been alleged, rather he was forcibly taken from his residence and the incident has been captured in a CCTV, which footage is in the possession of the defence. Counsel submits that the petitioner is in detention since 03.03.2021 and the trial is nowhere near conclusion. A categorical assertion has been made by him on the basis of Custody Certificate dated 28.03.2023, which is on the record, that the petitioner is not involved in any other case under the NDPS Act.

4. State counsel has filed affidavit of Senior Superintendent of Police, District Ferozepur, which is taken on record and by referring to it, he submits that out of seven prosecution witnesses, three have been examined and two have been given up. He has opposed the petition by submitting that the petitioner is named as an accused in a criminal case registered against him under the Punjab Excise Act. State counsel has also invited the attention of the Court to Section 37 of the NDPS Act to submit that the petitioner is not entitled to bail as the total weight of Tramadol effected from the petitioner is 417 grams.

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

6. Hon'ble 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, 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.”

7. In ***Special Leave to Appeal (Crl.) No.1166 of 2023*** titled as ***Chet Ram @ Ram Veer Versus Union of India***, decided on 15.03.2023, the Apex Court has granted the concession of bail to the accused even though he was involved in another criminal case lodged against him for offence under the NDPS Act.
8. Noticing the custody of almost thirty months, stage of the trial and the nature of accusation levelled against the petitioner, this Court is prima facie of the view that the petitioner deserves to be enlarged on bail.
9. Without advertng 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

31.08.2023
Kamal

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