

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-27931-2023
Date of decision:- 14.12.2023

Javed Ahmed Sheikh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Raj Kumar Gupta, Advocate for the petitioner.

Mr. A.P.S.Tung, DAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This is the third petition filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
144	12.10.2019	Maqsudan, District Jalandhar Rural	15 and 22 of the NDPS Act

2. Case of the prosecution is that FIR, Annexure P-1, was registered as information was received that a truck loaded with poppy husk and drug capsules is being driven from Delhi to Jammu. A barricade was set up, truck bearing No. JK-05-D-4481 was intercepted, recovery of 8 kg poppy husk from cabin behind driver seat and two plastic bags with a total of 350 bottles of Codeine Phosphate Tnprolioine Hydrochloride Syrup Maxcoff-T 100 ml each was effected. Truck was being driven by Javed Ahmed Sheikh, present petitioner, and on his personal search, he was found to be carrying 1200 capsules of SPM-PRX-WOCKHARDT in a plastic bag wrapped around his leg. The other occupant of the truck was Nasir Ahmad Sheikh and on his personal search, 800 capsules of SPM-PRX-WOCKHARDT was made from his person.

3. Counsel for the petitioner has contended that the petitioner has been falsely implicated and no recovery as alleged was effected from him. He submits that there was a violation of mandatory provision of the NDPS Act at the time of search and seizure inasmuch as neither the secret information was reduced into writing nor any independent witness was associated at the time of alleged search. Counsel submits that the petitioner, who is in custody since 15.10.2019, deserves to be enlarged on bail as the trial has not concluded. He has also placed reliance upon judgment dated 23.03.2023, Annexure P-2, whereby co-accused, Nasir Ahmad Sheikh, has been enlarged on regular bail.

4. *Per contra*, State counsel, upon instructions from ASI, Satnam Singh and on the basis of affidavit of Senior Superintendent of Police, Jalandhar (Rural) has opposed the petition by submitting that as the recovery effected falls within the ambit of commercial quantity, bar under Section 37 of the NDPS Act is applicable. He submits that the petitioner does not enjoy a clean past and has been convicted in another criminal case for offence under the NDPS Act. He submits that the prosecution evidence is at an advanced stage and the delay cannot be attributed to the State.

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

6. As per instructions received by the State counsel from ASI, Satnam Singh, out of twelve prosecution witnesses, seven have been examined and examination-in-chief of four more have been recorded, but they have not been cross-examined by the counsel for the petitioner, who has been repeatedly requesting for deferment. Still further, by referring to the affidavit, he submits that the truck carrying the contraband belongs to

Abdul Raseed Sheikh, petitioner’s father and it has been released to him on sapurdari. Despite being summoned thirteen times, the truck has not been produced by him and by order dated 10.03.2023, the Trial Court has forfeited the sapurdari bond and ordered the SHO to seize the truck and produce it before the Court.

7. The capsules recovered from the petitioner have been found to contain 729.6 grams of Tramadol Hydrochloride, which falls within the scope of commercial quantity and the rigor of Section 37 of the NDPS Act will come into play. Furthermore, petitioner does not enjoy a clean past and stands convicted in another criminal case lodged against him under the NDPS Act. The case of the petitioner is not at par with that of co-accused, who was released on bail vide order, Annexure P-2, not only considering the long detention, but also after noticing that he had clean antecedents.

8. Keeping in view the totality of facts and circumstances, nature of allegations, gravity of offence, antecedents of the petitioner, the advanced stage of the prosecution evidence and the delaying tactics of the defence, this Court is of the opinion that the concession of bail cannot be extended to the petitioner.

9. There is no merit in the petition, which is hereby dismissed.

10. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

14.12.2023

Kamal

(SUVIR SEHGAL)
JUDGE

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