

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-27306 of 2020(O&M)
Date of Decision:09.05.2023

Jorawar Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. D.N. Ganeriwala, Advocate
for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

1. This is the ^{2nd} petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in:-

FIR No.	Dated	Police Station	Sections
173	07.10.2018	Police Station Division B, Amritsar	21, 22 of NDPS Act and Section 25/29/32 added later on).

2. Case of the prosecution is that during routine checking, a Skoda vehicle was stopped and the driver, who identified himself as Jorawar Singh, present petitioner, was found to be in possession of two Packets of Polythene wrapped around his waist. The polythene wrappers were found to contain 2 kg of Heroin.

3. Learned counsel for the petitioner submits that the petitioner is a Canadian citizen who has come to his home country on a visit for few days and has been falsely implicated by the police. He submits that at the time of search and seizure the mandatory provisions of the NDPS Act have not been complied

with. Still, further, it is his case that on the basis of confessional statement which has been forcibly recorded, Gurpreet Singh @ Gopi was arrested who has been released on bail by this Court vide order dated 31.03.2022 passed in CRM-M-37991 of 2021. Still, further he submits that despite long detention of the petitioner, the trial is no where near conclusion and by placing reliance upon the judgment of the Supreme Court in SLP (Criminal) No. 6690 of 2022 titled as '**Dheeraj Kumar Sukla Vs. State of Utter Pradesh**' decided on 25.01.2023, he submits that the petitioner who has clean antecedents deserves to be enlarged on bail.

4. Per contra, learned State counsel has opposed the petition and has argued that as the recovery effected from the petitioner falls under the commercial quantity, bar contained under Section 37 of the NDPS Act comes into operation. By making a reference to the affidavits filed by the Assistant Commissioner of police as well as Deputy Commissioner of Police, he submits that 18 out of 21 prosecution witnesses have been examined. Upon instructions from ASI Bagecha Singh, he submits that out of the remaining 3 prosecution witnesses, one of them was examined yesterday i.e on 08.05.2023 and the remaining two witnesses have been summoned through non-bailable warrants. He submits that besides the recovery effected from the person of the petitioner, another 02 kg of heroin was recovered on the basis of his confessional statement.

5. I have considered the submissions of the counsel for the parties.

6. Hon'ble Supreme 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.”

7. Admittedly, the petitioner is in confinement for the last almost 55 months. Although the prosecution evidence is at an advanced stage and strict instructions have been issued by the Deputy Commissioner of the Police, to conclude the evidence at the earliest, the official witnesses have not appeared and the trial Court has issued non-bailable warrants for their appearance. A perusal of the custody certificate filed by the State shows that the petitioner has clean antecedents. This Court, therefore, satisfied that the parameter as down by the Supreme Court by the **Dheeraj Kumar Shukla's case (supra)** are fulfilled and the petitioner deserves to be enlarged on bail.

8. Without adverting 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. As the State counsel has expressed an apprehension that the petitioner is a flight risk, it is directed that while being released on bail, petitioner shall surrender his passport before the trial Court.

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

09.05.2023
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(SUVIR SEHGAL)
JUDGE

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