

2023:PHHC:164902

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CRM M-28427 of 2023
Date of Decision: 21.12.2023

Kulwinder Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.4 dated 13.04.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station SSOC, District Mohali (S.A.S. Nagar).

2. The brief facts of the prosecution case are that on 13.04.2021, ASI Amandeep Singh received secret information to the effect that Narinder Kumar and Kulwinder Singh (present petitioner) were transporting junk material from the state of U.P. and M.P. in truck bearing registration No. PB-07-AS-6973 and they used to bring intoxicant capsules by concealing the same in the junk material and supply to their customers. It was also disclosed that they would bring

the intoxicant capsules and supply the same near a truck repair shop behind Bus Stand, Mohali, If raid was conducted, accused can be apprehended alongwith intoxicant capsules. Finding the information reliable, ASI Amandeep Singh wrote a rukka, on the basis of which present FIR was registered.

3. A raid was conducted at the disclosed place where truck No. PB- 07-AS-6973 was found standing and search of the truck was conducted after unloading the scrap from the truck and one cardboard box was recovered from the right side corner seat of driver and on opening the same, strips of capsules were found and on counting 1077 strips of Proxymd-Spas (NrxParacetamol, Diclomine HCL, Tramadol HCL Capsules and each strip was containing 08 capsules of blue in colour, 144 strips of Pyveevon-Spas (NrxDiclomine HCL, Tramadol HCL and Acetaminophel Capsule), each strip containing 08 capsules total 144x8-1152 capsules and every strip was containing batch No. LTPC-001, MFD date 01-2021 and Exp. Date 12-2022 were recovered. The accused could not produce any permit or licence as such they were arrested.

4. Learned counsel for the petitioner contends that as per the case of the prosecution, the petitioner and his co-accused, namely, Narinder Kumar were found in possession of 1077 strips of Proxymd-Spas and 144 strips of Pyveevon-Spas and the alleged recovery of 1152 intoxicant capsules falls within the ambit of 'commercial quantity'. Learned counsel for the petitioner submits that

the petitioner has been falsely implicated in the present case and there is no other criminal case registered against the present petitioner. He further contends that similarly placed co-accused Narinder Kumar has already been granted the concession of bail by this Court vide order dated 06.04.2022 (Annexure P-2). Learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the matter of SLP No. 6690 of 2022, titled as **“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”**, in which the Hon'ble Supreme Court held as follows:-

“2. The allegations are that on a secret information, the police authorities intercepted two vehicles on 23.06.2020 i.e. one 'Gray' coloured 'Honda City' car and the second 'White' coloured ' Swift Dzire' car. On an interrogation at the spot, Praveen Maurya @ Puneet Maurya, Rishab Kumar Maurya and Dheeraj Kumar Shukla were found to be occupants of the 'Honda City' car whereas the petitioner was driving the 'Swift Dzire' car. On taking a search, more than 92 kgs. Ganja was allegedly recovered from 'Honda City' car where as more than 65 kgs. Ganja was recovered from 'Swift Dzire' Car. The accused were arrested at the spot. The petitioner is, thus, in custody since 24.06.2020.

3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. 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.

4. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the trial Court.”

5. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the quantity of contraband recovered from the petitioner is commercial in nature and the rigors of Section 37 of NDPS Act would apply to the facts of the present case. However, learned State counsel admits that there is no other criminal case against the present petitioner.

6. I have heard learned counsel for the parties and perused the record.

7. From the record, it is evident that the petitioner was arrested in the present case on 13.04.2021 and is in custody for the last about 02 years and 08 months. There is no other criminal case against him.

8. Consequently, keeping in view the above stated facts and the law laid down by the Hon'ble Supreme Court in the matter of **Dheeraj Kumar Shukla's case (Supra)**, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned.

21.12.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No