

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30123-2023
Date of Decision:06.09.2023

Satpal Singh @ Sattu

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

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

N.S.Shekhawat J.

1. The petitioner has filed the instant petition under Section 439 Cr.PC with a prayer to grant regular bail in case FIR No. 0001 dated 01.01.2020, registered under Section 22 NDPS Act, 1985, Police Station Samana, District Patiala.

2. As per the story of the prosecution, 50 boxes each containing 50 strips of 10 intoxicant tablets each i.e. total 25000 intoxicant tablets of Clovidol 100 SR Tramadol Hydrochloride tablets 100 mg, were recovered from the polybag of yellow colour kept in the Alto car of the petitioner. The FSL report was received and as per the same, the tablets contained Tramadol Hydrochloride and the average weight of each of the tablet was 402 mg and thus, the petitioner was found in possession of 10,050 grams of Tramadol Hydrochloride, which falls in the commercial quantity.

3. Learned counsel for the petitioner contends that even though the recovery of the contraband from the present petitioner is commercial in nature,

but the petitioner is in custody since 01.01.2020 i.e for more than 03 years and 08 months. He further contends that even though the provisions of Section 37 of the Act would be applicable to the facts of the instant case, but keeping in view such a long incarceration of the petitioner, his right to speedy trial as envisaged under Article 21 of the Constitution of India is violated and he is liable to be enlarged on bail. Learned counsel for the petitioner has referred to the order dated 25.01.2023 passed 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”**, wherein 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 petitoinier 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. Learned counsel for the petitioner has further relied upon the order dated 13.07.2023 passed by the Hon'ble Supreme Court in the matter of **SLP No. 4169 of 2023** titled as **Rabi Prakash Vs. State of Odisha**, wherein the Hon'ble Supreme Court has observed as under:-

“2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

5. On the other hand, learned State counsel has vehemently

opposed the submissions made by learned counsel for the petitioner on the ground that the recovery of the contraband from the present petitioner is commercial in nature and is not entitled for bail in view of the conditions laid down under Section 37 of the NDPS Act. Learned State counsel further submits that two more cases under NDPS Act have already been registered against the petitioner, however, the petitioner is on bail in both the cases.

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

7. No doubt that the quantity recovered from the petitioner is commercial in nature and the stringent provisions of Section 37 of the NDPS Act would apply to the facts of the instant case. However, it is evident from the custody certificate filed by learned State counsel during the court proceedings that the petitioner has undergone more than 3 years and 8 months of custody.

8. Thus, keeping in view the observations made by the Hon'ble Supreme Court in the matter of **Dheeraj Kumar Shukla's case (Supra)** and **Rabi Prakash' case (Supra)**, 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 subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court

concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st and 3rd Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

06.09.2023
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(N.S.SHEKHAWAT)
JUDGE

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

