

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

214

CRM-M-31564-2023 (O&M)
Date of decision: 28.08.2023

DHIRAJ SINGH ALIAS SONU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

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

Present : Mr. Mr. Ruhani Chadha, Advocate for the petitioner.

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

N.S.SHEKHAWAT. J.(Oral)

The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail to him in case FIR No.302 dated 10.12.2020 registered under Sections 18 and 29 of NDPS Act, at Police Station City Tarn Taran, District Tarn Taran.

As per the case of the prosecution, the police had set up a barricade for patrolling and crime prevention and in the meantime, a Safari car was noticed, which was coming from the opposite side. On suspicion, the occupants of the car were apprehended and they disclosed their names and addresses as Dheeraj Singh @ Sonu son of Seva Singh, resident of Shashtari Nagar Mantoda, District Bundi, Rajasthan and Mandeep Singh, son of Jasmeet Singh resident of Raghunathpura

Jatli Kalan, Nawagaon, District Bundi, Rajasthan. After following the procedure prescribed by the law, both were apprehended at the spot. As per the case of the prosecution, 2.5 Kg opium was recovered from each of them. Thus, a total recovery of 5 kg of opium was effected from both the persons, who were apprehended at the spot on 10.12.2020.

Learned counsel for the petitioner contends that the petitioner was arrested in the present case on 10.12.2020 and is in custody for the last more than 02 years and 07 months. He further contends that the investigation is complete in the present case and the challan has already been presented in the Competent Court of law, however, the charges are yet to be framed against the present petitioner. Learned counsel further relies 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", decided on 25.01.2023, wherein the Hon'ble Supreme Court has 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.”

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.

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

It is not in dispute that no other case is pending against the present petitioner. Apart from that, 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 02 years and 07 months of custody.

Thus, keeping in view the observations made by the Hon'ble Supreme Court in the matter of Dheeraj Kumar Shukla's 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 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 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.

(N.S.SHEKHAWAT)
JUDGE

28.08.2023
Amandeep

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