

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-33728-2022(O&M)
Date of decision:- 16.08.2023

Mohd.Naseer @ Soni

... Petitioner

Versus

State of Punjab

.. Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Mohd.Yousaf, Advocate
for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

CRM-27279-2022

Exemption, as prayed for is granted. Application is allowed accordingly.

CRM-M-33728-2022

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

FIR No.	Dated	Police Station	Sections
35	23.02.2018	Sangat, District Bathinda	15 and 25 of NDPS Act

2. Version of the prosecution is that FIR, has been registered after a truck was intercepted and recovery of 300 kg of poppy-husk was effected. The truck was being driven by Gurcharan Singh @ Charna and Mohd. Naseer @ Soni (present petitioner) was the cleaner, who were apprehended

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on the spot.

3. Counsel for the petitioner contends that the petitioner has been falsely implicated as the petitioner was not aware that contraband was being transported on the vehicle. He submits that at the time of the alleged search and seizure, mandatory provisions of the NDPS Act have not been complied with. It is his assertion that the petitioner, who is in custody since 27.02.2018 and has a clean past, deserves to be enlarged on bail as the trial is not likely to conclude in near future. Counsel has placed reliance upon the judgments of the Supreme Court in *Union of India Versus K.A. Najeeb 2021(3) SCC 713, SLP (Crl) No.6690 of 2022* titled as *Dheeraj Kumar Shukla Versus The State of Uttar Pradesh*, decided on 25.01.2023, *SLP (Crl.) No.1166 of 2023* titled as *Chet Ram @ Ram Veer Versus Union of India*, decided on 15.03.2023 and *SLP (Crl.) No.4169 of 2023* titled as *Rabi Prakash Versus The State of Odisha*, decided on 13.07.2023, to submit that bar of Section 37 of NDPS Act would not be a hindrance to the release of the petitioner as the petitioner is in custody for almost five and a half years.

4. *Per contra*, State counsel has opposed the petition and submitted that as the petitioner was travelling in the vehicle, he cannot absolve himself from the liability. As per his instructions from ASI Som Parkash, charge was framed on 25.7.2018 and 7 out of 19 prosecution witnesses have been examined. Custody certificate dated 14.08.2023 has been filed by him, which is taken on record.

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

6. Petitioner is in confinement for the last more than 65 months.

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Prosecution evidence is half way. Petitioner enjoys clean antecedents and there is a remote possibility of an early conclusion of the trial. This Court is, therefore, of the view that the case would fall within the parameters of the judgments of the Supreme Court relied upon by the counsel for the petitioner.

7. In view of the above, without advertng to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.
8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

16.08.2023
Brij

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