

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33714-2023

Date of Decision:10.08.2023

Kulwant Singh @ Kanta

...Petitioner

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent : Mr. Sumeet Singh Brar, Advocate
for the petitioner.

Mr. M.S.Bajwa, Deputy Advocate General, 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 in case FIR No.71 dated 16.03.2020 registered under Section 22 of NDPS Act, at Police Station Sangat, District Bathinda.

As per the case of the prosecution, on 16.03.2020, the present petitioner/accused was found in possession of 90 strips of tablets labelled as Clovidol-100 SR, each strip containing 10 tablets. As such, 900 tablets labelled as Clovidol-SR 100 of the same batch number were recovered from the possession of the petitioner. During the course of investigation, the FSL report was received and as per the said report, Tramadol was found in the aforesaid tablets. Thus, as per the report of RTFSL, Bathinda, the total weight of the tablets comes out to be 367.767 grams, which falls within the category of commercial quantity.

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 16.03.2020 i.e. for more than 03 years and 4 months. He further contends that even though the rigors of Section 37 of the NDPS 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 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.”

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.”

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 3 years and 4 months of custody and only 3 witnesses, out of total 9 witnesses, have been examined so far.

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.

In compliance of the last order, a report has been submitted by the learned Judge, Special Court, Bathinda. It is apparent from the report that the explanation offered by the learned Judge, Special Court is not satisfactory. The Learned trial Court is directed to conclude the trial within a period of three months from today.

10.08.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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