

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36994-2023
DECIDED ON: 08.11.2023

SUKHWINDER SINGH @ NIKKAPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.84, dated 16.09.2020, under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') registered at Police Station Dharamgarh, District Sangrur, Punjab.
2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement made by the co-accused namely Kulwant Singh. The petitioner was neither present at the spot nor any incriminating material has been recovered from his possession. He further asserts that there is a non-compliance of Sections 42, 50 and 52 of the Act. The petitioner is in custody since 02.05.2022, thus, he has suffered incarceration for a period of more than 1 ½ years.
3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He submits that it is correct that the petitioner has already undergone the sentence for a period of 1 year and 6 months and after framing of charges on 11.10.2022, out of total 16 prosecution witnesses only 9 have been

examined so far. He, however, opposes the prayer made in the present petition stating that since the recovery from the petitioner and other co-accused was is of 10,000 tablets of Tramadol, which falls in the category of commercial quantity.

4. Be that as it may, the petitioner was not apprehended at the spot and nominated in the present case on the basis of disclosure statement made by the co-accused Kulwant Singh; no recovery was effected from his conscious possession added with the fact that the petitioner is a person of clean antecedents, who is not involved in any other case of any nature whatsoever and admittedly he is in custody for a period of more than 1 year and 6 months, therefore, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, wherein ***'Bail is a Rule and Jail is an Exception'*** and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.***

5. Further reliance can be placed upon the judgment of Apex Court rendered in the case of ***"Dheeraj Kumar Shukla vs. State of Uttar Pradesh", SLP(Crl) No.6690 of 2022***, wherein it has been held that though 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 more than one and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with.

6. In view of the discussions made hereinabove and the dictum of law laid down in ***Dheeraj Kumar Shukla's case (supra)***, the petitioner is ordered to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

7. The present petition is, hereby, allowed.
8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

08.11.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>