

CRM-M-43618-2022[1]2023:PHHC:072581

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

204CRM-M-43618-2022
Date of decision:18.05.2023

Arun @ Anu... Petitioner

Vs.

State of Punjab... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Liaqat Ali, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

SUVIR SEHGAL, J. (Oral)

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973, seeking grant of regular bail to the petitioner in case bearing FIR (Annexure P-1):-

FIR No.	Dated	Police Station	Sections
120	23.11.2019	STF, Mohali	21/25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”).

2. Version of the prosecution is that on the basis of secret information received, a motorcycle with two riders was intercepted and recovery of 530 grams of heroin was made from the tiffin box being carried by the pillion rider, who identified himself as Arun @ Anu (present petitioner). The driver of the motorcycle identified himself to be Nitesh Kumar.

3. Counsel for the petitioner contends that petitioner has been falsely implicated in the criminal case and no recovery was effected from him. He submits that at the time of alleged search and seizure, mandatory provisions of the NDPS Act have not been complied with. Still further, it is his submission that although as per the custody certificate, petitioner is stated to be involved in two criminal cases, but he has been acquitted in FIR No.73 dated 13.10.2013 registered against him under the Excise Act. Insofar as second FIR is concerned, counsel submits that it was registered for offence under the NDPS Act, but no recovery was effected from him and he was arraigned as an accused on the basis of disclosure statement of his sister, who was named as the main accused. By placing reliance upon the judgments of Hon'ble Supreme Court in **SLP (Crl.) No(s).6690 of 2022 titled as Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, decided on 25.01.2023** and **SLP(Crl.) No(s).1166 of 2023 titled as Chet Ram @ Ram Veer Vs. Union of India, decided on 15.03.2023**, counsel submits that petitioner deserves to be enlarged on bail.

4. Per contra, upon instructions from SI Makhan Ram, State counsel has opposed the petition and submitted that besides contraband, recovery of a weighing machine and empty pouches was effected. He submits that the motorcycle belonged to co-accused, Nitesh Kumar and both the accused were involved in drug peddling. As per his instructions, 04 out of total 16 prosecution witnesses have been examined and 06 have given up.

5. I have considered the submissions made by counsel for the parties.

6. Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)** has held as under:-

“....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 through the charges have been framed.”

7. In **Chet Ram @ Ram Veer's case (supra)**, Hon'ble Supreme Court after noticing the provisions of Section 37 of the NDPS Act and his involvement in another NDPS case, released the accused on bail

8. Insofar as the present petitioner is concerned, he has been in custody for the last almost 3½ years, trial is midway and there is little possibility of its early conclusion, therefore, this Court is of the opinion that the judgments of Hon'ble Supreme Court would come to the aid of the petitioner and he is entitled to the concession of bail.

9. Without adverting to the merits or demerits of the arguments addressed, petition is allowed and petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 18, 2023
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>