

CRM-M-49226-2022

202

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-49226-2022
Date of Decision: 06.09.2023

Lakhbir Singh @ Lakha

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.102 dated 21.07.2020, under Sections 22-C, 27-A & 29 of the NDPS Act, 1985, registered at Police Station Jakhal, District Fatehabad.
2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 3 years, 1 month and 18 days as of today and allegedly there was a recovery of 1000 tablets of *Tramadol* which falls in the category of commercial quantity under the NDPS Act. He further submitted that as per the allegations, the petitioner was driving motorcycle on which his wife was a pillion rider from whom there was an alleged recovery of the aforesaid contraband and it was not from the petitioner. He also submitted that the wife of the petitioner, namely, Rani has already been granted the

benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-4. He also submitted that the petitioner is having clean antecedents and is not involved in any other case and earlier he was involved in one case under the NDPS Act in which he has already been acquitted and the present case was planted upon the petitioner. He submitted that be that as it may, now the custody of the petitioner is 3 years, 1 month and 18 days and only six witnesses have been examined till date. He further submitted that earlier when the petitioner had filed a petition for grant of regular bail before this Court vide Annexure P-7, this Court had rather directed the trial Court to expedite the conclusion of the trial and in the meantime to examine the Investigating Officer within a period of two months while leaving it open to the petitioner to file a fresh petition for bail, after the examination of the Investigating Officer, if the circumstances of the case so warrant. The aforesaid order was passed by a Co-ordinate Bench of this Court on 24.08.2022 and more than one year has elapsed that the Investigating Officer has already been examined but the trial is not going at fast space despite the fact that the direction was issued to the trial Court to expedite the trial by way of the aforesaid order vide Annexure P-7. He submitted that considering the antecedents of the petitioner and also considering his long custody, he may be considered for the grant of regular bail.

3. Learned counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court passed in *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "*Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh*" and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "*Rabi Prakash Vs. The State of Odisha*" and contended

that the bar contained under Section 37 of the NDPS Act will be applicable to the present petitioner in the light of the aforesaid two judgments passed by the Hon'ble Supreme Court and also in view of the fact that the alleged recovery was not from the petitioner.

4. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana has stated that it is correct that the petitioner has faced incarceration for 3 years, 1 month and 18 days and now six witnesses have been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the wife of the petitioner was 1000 tablets of *Tramadol*, which falls in the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the antecedents of the petitioner is concerned, he submitted that the petitioner is not involved in any other case and he was earlier involved in one case under the NDPS Act in which he has already been acquitted.

5. I have heard the learned counsels for the parties.

6. It is a case where the petitioner has faced incarceration for about 3 years, 1 month and 18 days. As per the allegations, the petitioner was riding the motorcycle and the recovery was effected from the wife, who has already been extended the benefit of bail vide Annexure P-4. The petitioner is stated to be having clean antecedents and is not involved in any other case and he was earlier involved in one case in which he has already been acquitted. A perusal of Annexure P-4 which is the bail order passed by a Co-ordinate Bench of this Court would show that the wife of the petitioner, namely, Rani has been granted bail not on merits but by way of default bail.

Be that as it may, the long custody of the petitioner and his antecedents, is required to be considered in the light of the aforesaid judgments passed by the Hon’ble Supreme Court in *Dheeraj Kumar Shukla’s case (Supra)* and *Rabi Prakash’s case (Supra)*.

7. Therefore, considering the totality of the circumstances of the present case, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner especially in view of the fact that the alleged recovery is not from the petitioner but from his wife and also in the light of Article 21 of the Constitution of India. Consequently, this Court deems it fit and proper to grant regular bail to the petitioner especially considering the long custody.

8. In view of the above, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

06.09.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No