

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(208)

CRM-M-54577-2022
Date of decision:- 13.02.2023

Sahil Atwal

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sanjeev Kumar Bawa, Advocate for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No.258 dated 12.12.2019, registered for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) at Police Station Rama Mandi, District Jalandhar, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered when recovery of 180 injections of Buprenorphine- Rexogesic 2 ML each and 180 injections of Avil were effected from the petitioner.

Counsel for the petitioner contends that despite the fact that the petitioner has a clean past, he is languishing in detention for the last more

than three years. The prosecution has barely examined two out of eight witnesses. He has placed reliance upon the judgment of the Supreme Court passed in *SLP (Crl.) No. 6690 of 2022* titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, decided on 25.01.2023 to submit that the petitioner deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions received from ASI, Balwinder Singh, has opposed the petition and has submitted that two witnesses have been given up and the remaining are to be examined. As per his instructions, charge was framed on 25.03.2021. He has filed Custody Certificate dated 12.02.2023, which is taken on record and submits that the petitioner is facing trial in an FIR registered for offences under IPC. He has argued that as commercial quantity of contraband has been recovered, rigor of Section 37, NDPS Act will apply.

I have heard counsel for the parties.

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

“3. 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.”

Petitioner has been in detention for thirty eight months and trial is not likely to conclude in the near future. He is involved in another criminal case, but not under the NDPS Act. This court is of the prima facie opinion

that considering the above facts and the observations of Supreme Court in *Dheeraj Kumar Shukla's* case (supra), prayer made in the petition deserves to be accepted.

Without adverting to the merits or demerits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

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

13.02.2023
Kamal

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