

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.226

CRM-M-58084-2022
Date of decision:02.11.2023

(1)
Bohar Singh

...Petitioner

Versus

State of Punjab

...Respondent

(2)

CRM-M-58371-2022

Gurpreet Singh @ Gopi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. J.S. Sandhu, Advocate for the petitioner
(in CRM-M-58084-2022).

Mr. P.S. Sekhon, Advocate for the petitioner
(in CRM-M-58371-2022)

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. This order shall dispose off above-said two petitions as the same have arisen out of the same FIR.

2. Both these petitions have been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioners in FIR No.47 dated 01.04.2021 registered under Sections 22, 22(c) and 29 of the NDPS Act at Police Station Baghapurana, District Moga.

3. As per the case of the prosecution, the petitioners were found in conscious possession of 3400 Ultradal-100 SR tablets and were arrested at the spot.

4. Learned counsel for the petitioners contends that the petitioners were arrested in the present case on 01.04.2021 and are in custody for the last more than 02 years and 07 months. They further contend that the trial in the present case has been unreasonably delayed by the prosecution without any fault on the part of the present petitioners. They have also relied upon the law laid down 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"**, in which the Hon'ble Supreme Court has 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.

4. *For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.”*

5. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioners on the ground that the recovery of contraband from the present petitioners is commercial in nature and the stringent provisions of Section 37 of the NDPS Act would be attracted in the present case. Thus, the petitioners do not deserve the concession of bail.

6. I have heard learned counsel for the parties and with their able assistance, I have gone through the record of the case.

7. No doubt, the quantity of recovered contraband would fall in the 'commercial category' and the provisions of Section 37 of the NDPS Act would be attracted in the present case; however, it is also borne out from the record that the petitioners are in custody for the last more than 02 years and 07 months. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present petitioners. Thus, the 'right to speedy trial' of the petitioner as enshrined in Article 21 of the Constitution of India is violated and the conditions as mentioned in Section 37 of the NDPS Act can be dispensed with at this stage for the limited purpose of grant of concession of bail.

8. Consequently, keeping in view the above stated facts and the law laid down by the Hon'ble Supreme Court in the matter of **Dheeraj Kumar Shukla's case (Supra)**, the petitioners, namely Bohar Singh (CRM-M-58084-2022) and Gurpreet Singh @ Gopi (CRM-M-58371-2022) are ordered to be released on bail subject to their 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 petitioners 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 them to disclose such facts to the Court or to any other authority.
- (ii) The petitioners shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioners shall not absent themselves from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioners shall surrender their passport(s), if any, (if already not surrendered), and in case they are not holder of the same, they shall swear an affidavit to that effect.
- (v) The petitioners shall also file their affidavits before the concerned Court, mentioning their ordinary place of residence and number of mobile phone, which shall be used by them during the pendency of the trial. In case of change of place of residence/mobile number, they shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioners involve 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 on two heavy local surties each and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioners.

(viii) The petitioners shall report every 1st and 3rd Monday of English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark their presence by making an entry in the rojnamcha. In case, they do not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to them shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

02.11.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO