

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(110+128)

CRM-M-56660-2023 (O&M)
Date of decision:- 14.11.2023

Gurwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ruhani Chadha, Advocate for the applicant-petitioner.

Mr. Arun Luthra, DAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

CRM-47912-2023

1. On an oral request made by counsel for the applicant-petitioner, he is permitted to amend the petition.
2. Amended petition is taken on record.
3. Application is allowed.

Main case

1. This is the third petition filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
262	05.12.2019	Shahkot, District Jalandhar	21 of the NDPS Act, 1985 and Section 25 of the Arms Act, 1959

2. Version of the prosecution is that FIR, Annexure P-1, has been registered when on suspicion, a motorcycle being driven by Gurwinder Singh, present petitioner, was intercepted. Gurwinder Singh was found to be carrying a bag and upon search, recovery of 900 grams heroin, 0.315 bore pistol and three cartridges was made from him. Jagdish Singh, who was a pillion rider, was found to be in possession of 200 grams of heroin.

3. Counsel for the petitioner submits that petitioner was arrested at the spot and continues to be in detention, but the trial is nowhere near completion. He contends that at the time of search and seizure, the mandatory provisions of the NDPS Act were not complied with. Counsel further submits that petitioner's sister is getting married on 17.11.2023 and presence of the petitioner is necessary. By making a reference to the amended petition, counsel submits that although the petitioner has been named as an accused in three other criminal cases, including an FIR registered under the NDPS Act, but the long incarceration of petitioner entitles him to be released on bail.

4. *Per contra*, State counsel, upon instructions received from ASI, Puran Singh, has opposed the petition. He urges that as the recovery effected from the accused falls within the ambit of commercial quantity, bar under Section 37 of the NDPS Act is attracted. He submits that on the disclosure statement of the petitioner, Bagicha Singh was arraigned as an accused, although no recovery was effected from him. He has categorical instructions to state that charge was framed in March, 2022, and fourteen out of nineteen prosecution witnesses have been examined. Upon instructions, he submits that the factum of marriage of Satwinder Kaur, petitioner's sister, has been ascertained.

5. I have heard counsel for the parties and considered their respective submissions.

6. Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh, 2023 SCC Online SC 918*** 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.”

7. In ***Special Leave to Appeal (Crl.) No.1166 of 2023*** titled as ***Chet Ram @ Ram Veer Versus Union of India***, decided on 15.03.2023, Hon’ble Supreme Court granted bail to a undertrial, who was involved in another criminal case registered against him under the NDPS Act. This Court is of the view that the case of the petitioner would fall within the parameters laid down by the Supreme Court in the above mentioned judgments. Petitioner has been in confinement for the last more than forty seven months, prosecution has to examine five more witnesses and there is a remote possibility of early conclusion of the trial. Furthermore, petitioner’s presence at the time of his sister’s marriage is essential as he has to perform religious ceremonies. For the reasons recorded above, this Court is of the opinion that the petitioner deserves to be enlarged on bail during the pendency of the trial.
8. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, 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/Trial Court concerned.
9. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

14.11.2023

(SUVIR SEHGAL)

Kamal

JUDGE

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