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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204) CRM-M-59884-2022
Date of decision:- 17.05.2023

Balwinder Singh @ Bali ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Parminder Singh Sekhon, Advocate for the petitioner.
Mr. Harish Nain, AAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. Reply by way of an affidavit dated 11.05.2023 of Superintendent of Police, Fatehabad has been filed by the State counsel, which is taken on record.
2. This is the fourth petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
05	15.01.2020	Jakhal, District Fatehabad	22-C of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short “the NDPS Act”)

3. Version of the prosecution is that FIR, Annexure P-1, has been registered when a youth, who was walking by the roadside, was checked on suspicion and was found to be in possession of 15 bottles of Wincirex 100 ml each with a total weight of 1 kg and 815 grams. The intoxicating

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substance found from the youth, who identified himself as Balwinder Singh @ Bali, present petitioner, was Codeine.

4. Counsel for the petitioner submits that the petitioner is in custody since 17.01.2020 and despite the fact that charges were framed on 09.09.2021, trial is still at a nascent stage. He submits that besides the present FIR, petitioner was accused of an offence under the Protection of Children from Sexual Offences Act, 2012, but was acquitted by the Trial Court in 2017, though the State has filed application (CRM-A-55-MA-2018) for Leave to Appeal, which is pending. He submits that as the petitioner enjoys a clean past and there is a remote possibility of an early conclusion of the trial, petitioner deserves to be released on bail. He has placed reliance upon the judgments of the Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, decided on 25.01.2023 and ***Special Leave to Appeal (Crl.) No.1166 of 2023*** titled as ***Chet Ram @ Ram Veer Versus Union of India***, decided on 15.03.2023.

5. Opposing the petition, learned State counsel, upon instructions from SI, Shishpal Singh, has submitted that the contraband, found in the possession of the petitioner, falls in the category of commercial quantity and the rigor of Section 37 of the NDPS Act is attracted. As per his instructions, four out of sixteen prosecution witnesses have been examined and one prosecution witness has unfortunately expired. He has also made a reference to the disclosure statement of the petitioner to oppose the prayer.

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

7. In **Dheeraj Kumar Shukla's** case (supra), it has been 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.”

8. In **Chet Ram @ Ram Veer** case (supra), Hon’ble Supreme Court released the accused on bail after he had undergone three and a half year of custody, after noticing that he was accused of offence under the NDPS Act. In so far as the present petitioner is concerned, he is in custody for the last more than forty months, trial is at an incipient stage and he has clean antecedents. Therefore, this Court is inclined to accept the prayer made in the petition.

9. 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.

10. 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

17.05.2023

Kamal

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