

CRM-M-61055-2022 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(203-1) CRM-M-61055-2022
Date of decision:- 01.05.2023
Rajesh @ Raja ... Petitioner
Versus
State of Haryana ... Respondent

(203-2) CRM-M-28302-2022 (O&M)
Narender ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sandeep Kotla, Advocate
for the petitioner in CRM-M-61055-2022

Mr. Amit Khatkar, Advocate
for the petitioner in CRM-M-28302-2022

Mr. Saurabh Mohunta, DAG, Haryana. for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This order shall dispose of **CRM-M-61055-2022** titled as ***Rajesh @ Raja Versus State of Haryana*** and **CRM-M-28302-2022** titled as ***Narender Versus State of Haryana*** as both the petitioners are accused in:-

FIR No.	Dated	Police Station	Sections
157	21.08.2020	Bhattu Kalan, District Fatehabad	22 (c) and 27-A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

and have approached this Court for the third time seeking grant of regular bail under Section 439 of the Code of Criminal Procedure, 1973.

2. Version of the prosecution is that on the basis of secret information, a raid was conducted on premises belonging to Arvind @ Bablu and recovery of 7200 tablets of Tramadol Hydrochloride was effected. The total weight of contraband recovered was 4 kg 854 grams.

3. Counsel representing the petitioner(s) have argued that no recovery has been effected from the petitioners. By referring to the disclosure statement of the main accused, Annexure P-7, it has been contended that both the accused-petitioners have not been named by accused Arvind @ Bablu. Counsel submits that accused-Narinder has clean antecedents, both the petitioners are in confinement since December, 2020 and September, 2020, respectively, and the trial is at an initial stage. Reliance has been placed by them upon the judgment 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, to submit that as there is a delay in the trial, they deserved to be released from confinement.

4. *Per contra*, learned State counsel has opposed the petition. He has filed separate status reports by way of affidavits of Deputy Superintendent of Police, Fatehabad in both the cases, which are taken on record and has contended that both the accused-petitioners have been named as the suppliers of the contraband by the main accused. In particular, State counsel submits that there are four criminal cases registered against accused – Rajesh @ Raja. Still further, he submits that in view of the quantity recovered from the petitioners, bar under Section 37 of the NDPS Act is attracted. Upon further instructions received from ASI, Mahender, he submits that charge has been framed against the accused on 02.02.2023 and six prosecution witnesses have been summoned for September, 2023.

5. I have heard counsel for the parties.
6. 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.”

7. Petitioners are in incarceration for the last more than twenty seven and thirty one months, respectively and as not a single prosecution witness has been examined. Moreover, both the accused-petitioners are not accused of any offence under the NDPS Act, though Rajesh @ Raja is accused of some offences under the IPC and no recovery of contraband has been effected from them. This Court is, therefore, of the opinion that the case of the petitioners will fall within the parameters laid down by the Apex Court in **Dheeraj Kumar Shukla's** case (supra) and they deserve to be enlarged on bail.
8. In view of the above, without advertng to the merits or demerits of the arguments addressed, both the petitions are allowed. Petitioners are ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.
9. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

01.05.2023
Kamal

(SUVIR SEHGAL)
JUDGE

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