

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

224

2024:PHHC:024877

CRM-M-25490-2023

Date of decision: February 22nd, 2024

Ginder Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.287 dated 09.11.2022 under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station STF, District STF Wing.

2. Before proceeding further, the relevant part of the FIR is reproduced as under:-

"Copy Ruqa, "SHO P.S. S.T.F. Phase-4, S.A.S. Nagar, Fateh" today myself SI alongwith C-2 Nandeep Singh 941/SMS, S/C Mandeep Singh 1465, C Charanjit Singh 2C/504 in the government vehicle Bollero No.PB-11AF-9850 which was driven by C Charanjit Singh 2C/504, in regard to conducting barricading as per the direction of the senior officers, for checking of suspicion persons, were present at on the link road leads from village Abul Khurana to village Tapa Khera, ASI Narinderpal Singh 2287/ Bathinda has gave information by making whatsapp call from his mobile number 80545-00996 to myself SI mobile

no.80549- 40842 today I alongwith S/C Paramjit Singh 1050/SMS, S/C Inderpreet Singh 1382/SMS, S/C Lakhwinder Singh and Lady S/C Sukhpal Kaur 1080/Bathinda in the private car was driven by S/C Paramjit Singh 1050/SMS, in regard to barricading on the link leads from village Abul Khurana to village Dabwali Rahuria Wali (Malko Ki) at a distance about 2 kilometers from village Abul Khurana, then during barricading from village Dabwali Rahurian Wali (Malko Ki) a car seen coming in very high speed, I signaled them to stop with my torch, suddenly the car driver stopped the car just 2 kilometers behind from the barricade and car was switched off, on which alongwith companion employees keep abducting two youngsters sitting in the car and on the back seat of the car 3 plastic bags are lying, in which myself ASI has suspicion that some intoxicant material seems to be available in the plastic bags. You come at the spot for further action. On which myself SI alongwith companion employees alongwith laptop, printer which is already available with myself SI in my vehicle reached at the spot. Where ASI Narinder Pal Singh 2287/Bathinda alongwith companion employees and abducted youngsters met and three plastic bags black colour were lying on the back seat of the car bearing no.PB 53C 7341 Honda City Silver colour, the mouth of which was tied. In which some intoxicant material is seems to be available. Myself SI has asked the name and address of the abducted youngsters, then the driver of car disclosed his name as Gurmeet Ram son of Angrej Ram son of Malla Ram resident of Dabwali Rahurian Wali (Malko Ki) and the youngster sitting on the conductor seat disclosed his name as Ginder Kumar son of Mahinder Pal son of Ashok Kumar resident of Dabwali Rahurian Wali (Malko Ki). On which myself SI tried to join public witness at the spot, but due to dark no one met. Then myself SI separately

aware Gurmit Ram and Ginder Kumar about my name, rank and place of posting and served them notice under Section 50 NDPS Act and said that I have suspicion that some intoxicant material is available in the 3 black colour plastic bags lying on the back seat of your car, due to which you and your car has to be searched. But under NDPS Act you have legal right that you can search you and your car from any Magistrate or gazetted officer, they can be call at the spot as per your desire. On which Gurmit Ram and Ginder Kumar above have separately told myself SI that we want to search us and our car in the presence of any gazetted officer, call him at the spot. On which memo of search of Gurmit Ram and Ginder Kumar prepared separately. On which myself SI has made whatsapp call from my mobile number 80549-40842 to Sh. Paramjit Singh P.P.S., D.S.P., STF Bathinda Range Bathinda mobile no.84278-48000 and requested him to come at the spot. At time about 11PM Sh. Paramjit Singh P.P.S., DSP, STF Bathinda Range Bathinda alongwith government vehicle and gunmen reached at the spot. Where SI informed him about the situation and produced abducted youngsters alongwith car before DSP, on which DSP Sahib has asked the name and address of Gurmit Ram and Ginder Kumar, they correctly disclosed their name as stated above. On which DSP has made the efforts to join public witness in the police party but due to night hours no one met. The DSP separately informed Gurmit Ram and Ginder Kumar about his name, rank and place of posting and served them notice under Section 50 NDPS Act and said that I have suspicion that some intoxicant material is available in the 3 black colour plastic bags lying on the back seat of your Honda City Car No.PB 53 C 7341 on which you and your car has to be searched, but under NDPS Act, you have legal right that you can search you and your car from any Magistrate or

gazetted officer. They can be call at the spot. On which Gurmit Ram and Ginder Kumar have said that they do not want to conduct their search in the presence of any Magistrate Sahib or any gazetted officer, we have full faith upon you, you can conduct our and our car search yourself only. On which DSP has prepared the separate memo of consent of both of them. Then on the instructions of DSP myself SI has conducted the search of above car, then after checked the black colour plastic bag lying on the back seat of car poppy husk was recovered and from the 2 black colour plastic bags raw material of poppy husk was recovered, which was weighed by myself SI through computer scale available with me, then the weight of 3 plastic bags lying on the back seat of the car found 30/30kgm poppy husk and the weight of 2 plastic bags of raw material of poppy husk was found 15/15 kgm, the serial number from 1 to 5 was marked thereon and separate parcels was prepared. Then myself SI has stamped the same with my stamp GS, sample of stamp was prepared on form M-29 separately. After used the stamp the same was handed over to ASI Narinderpal Singh 2287/Bathinda. Then the above parcels of plastic bags has been stamped by DSP Sahib with his stamp PS and also put his stamp on Form M-29 and after used the stamp he has kept the same with him. After checked the dashboard of the car from which the duplicate RC and a delivery receipt which is recovered with regard to purchase the car from Sukhchain Singh son of Gurdas Singh resident of Baba Karnail Singh Wali Gali, Ward No.21, Harjinder Nagar, Malout on dated 17.05.2022. Then myself SI has taken the above 3 parcels of plastic bag of poppy husk serial no.1 to 3 and 2 parcels of plastic bag of raw material of poppy husk from serial no.4 and 5 duly stamped with stamp GS+PS alongwith form M-29 sample of stamp and car alongwith duplicate RC and Delivery receipt has been taken into

police possession through memo of recovery. Then personal search of above accused Gurmit Ram was conducted then from the front pocket of his T-shirt currency note of Rs.100/- and a mobile phone key pad mark HERO black colour recovered and after conducted the personal search of accused Ginder Kumar from his front side pocket of shirt currency note of Rs.100/- and a mobile phone touch screen make OPPO black colour recovered, which has been taken into police possession through separate memo of personal search. Witnesses have appended their signatures. Accused Gurmit Ram and Ginder Kumar above have committed an offence under Section 15(c)-61-85 N.D.P.S. Act by keeping 120kgm poppy husk in their possession, on which after got typed ruqa against Gurmit Ram and Ginder Kumar above under above Sections, the ruqa is being sent through E-mail ps-stf.police@punjabpolice.gove.in to you.”

3. Learned counsel for the petitioner, *inter alia*, contends that while he was accompanying co-accused Gurmeet Singh in the latter's car on 09.11.2022, they were stopped by the police and then an alleged recovery of 120 kilograms of poppy husk from three bags, which were lying loaded in the car, was allegedly effected. Learned counsel submits that it is a false recovery, which has been planted upon the petitioner and furthermore, the petitioner was just accompanying the co-accused, who was in fact the registered owner of the vehicle in question; assuming for the sake of arguments, though not conceded, that the alleged recovery was indeed effected from the vehicle registered in the name of the co-accused, the petitioner had no knowledge of the contents of the bags.

4. On a pointed query put to the learned counsel for the petitioner as to whether the petitioner has any criminal antecedents, he has categorically replied in the negative.

5. It has been further submitted that after the challan was presented on 17.03.2023, charges were framed on 15.07.2023, however, till date the prosecution evidence had not concluded as only one witness out of the 28 cited by the prosecution had been examined and the next date fixed before the trial Court is 18.03.2024. Learned counsel submits that in the circumstances, the likelihood of the trial concluding in the near future looks bleak. In support of his submissions that he cannot be made to languish in custody on account of the delay in trial, learned counsel has placed reliance upon judgment of Hon'ble Supreme Court passed in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023.***

6. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from S.I. Sadhu Singh, has submitted that the petitioner and the co-accused were nabbed together and a huge recovery of 120 kilograms of poppy husk was then effected from the car, though concededly not registered in the name of the petitioner. Learned State counsel, on instructions, has also not disputed the stage of the trial.

7. On a pointed query, learned State counsel, on instructions, has not controverted the submissions made by the counsel for the petitioner qua his clean antecedents and he being not involved in any other case under the NDPS Act.

8. I have heard learned counsel for the parties and perused the material placed on record.

9. The petitioner has been in custody since 09.11.2022, the possibility of the trial concluding in the near future looks unlikely as 27 prosecution witnesses still remain to be examined. The petitioner is not stated to be involved in any other criminal case much less under the NDPS Act.

10. Hon’ble Supreme Court in *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022)* decided on **25.01.2023** has observed as under:-

“.... 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.”

11. In the facts and circumstances as enumerated hereinabove, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act.

12. Accordingly, the instant petition is allowed. Petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

13. Needless to say, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

February 22nd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No