

2024:PHHC:090443



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CRM M-30309 of 2024
Date of Decision: 18.07.2024

Sunny Kumar @ Johal ...Petitioner
Versus
State of Punjab ... Respondent

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

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.399 dated 02.12.2019 registered under Sections 22/29 of the NDPS Act at Police Station Phillaur, District Jalandhar Rural.
2. Learned counsel for the petitioner contends that earlier also, the petitioner had applied for grant of regular bail to him by way of CRM M-12432 of 2020, however, the prayer was declined by this Court on 17.03.2021. However, after passing of the said order, the petitioner continues to be in jail for the last more than 03 years and in view of the long custody of the petitioner, the present petition has been preferred before this Court with a prayer to grant the concession of bail to him.

3. Learned counsel for the petitioner contends that as per the case of the prosecution, the petitioner was found in conscious possession of 12 injections of Buprenorphine Rexogesic 2ML containing 24 ML of Buprenorphine Hydorchloride and the contraband, which was allegedly recovered from the petitioner, fall within the ambit of “commercial quantity”. He further contends that the petitioner remained in custody from 02.12.2019 to 15.05.2020, when he was granted the concession of interim bail by this Court. The interim bail was discontinued by this Court vide order dated 08.09.2020, however, the petitioner did not surrender before the trial Court. Finally, the petitioner was arrested on 17.11.2021 and since then, he is continuing in custody. Learned counsel submits that the petitioner has undergone more than 03 years and 01 month of custody till date. He further contends that in the present case, charge was ordered to be framed on 31.07.2023 and even after availing 25 opportunities, the prosecution has not been able to conclude the evidence. Learned counsel further contends that the petitioner is suffering from tuberculosis and his health is constantly deteriorating in jail. By referring to discharge card (Annexure P-2), learned counsel submits that the petitioner remained admitted in Government Medical College, Amritsar, for treatment w.e.f. 16.08.2023 to 29.08.2023. On 25.05.2024, he was again admitted in Government Medical College, Amritsar, which can be seen from the bed head ticket (Annexure P-3). The learned counsel for the petitioner has referred to the order passed

by the Hon'ble Supreme Court in the matter of "**Dheeraj Kumar Shukla Vs. State of Uttar Pradesh**", in which the Hon'ble Supreme Court 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. It is made clear that in addition to the conditions that may be imposed by the Trial Court, the petitioner shall be required to appear before the Trial Court on every date of hearing. In case the petitioner is found to be involved in future in any other similar case, the respondent State shall be at liberty to seek cancellation of bail granted to him by this Court.”

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the quantity of the contraband recovered from the present petitioner was commercial in nature and he is not entitled to be released on bail. Learned State counsel submits that the rigours of Section 37 would be attracted in the present case.

5. I have heard learned counsel for the parties and perused the record.

6. No doubt, the quantity of contraband, recovered from the present petitioner, falls within the ambit of “commercial quantity” but keeping in view the law laid down by the Hon’ble Supreme Court in the matter of ***Dheeraj Kumar Shukla’s*** case (supra), the conditions of Section 37 of the NDPS Act can be dispensed with in the present case as the petitioner has undergone more than 03 years and 01 month of custody. Moreover, the trial is not likely to be concluded in near future and further custody of the petitioner will not serve any purpose. Apart from that, the petitioner is a first offender and was never involved in any other criminal case.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner 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 him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner gets involved 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 an appropriate application for cancellation of bail granted to the present petitioner.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

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

18.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No