

212 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-6903-2021 (O&M)
Date of Decision: 20.07.2023

Didar Singh @ Dara

...Petitioner

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Jagjit Singh, Advocate
 for the petitioner.

Mr. Amish Sharma, Assistant Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

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.168 dated 25.08.2020 registered under Section 18 of NDPS Act, at Police Station Sadar Patiala, District Patiala.

As per the story of the prosecution, the petitioner was arrested on 25.08.2020, when he was coming on a motorcycle bearing No.PB-11-CC-8361 and 3 kgs of opium was allegedly recovered from him.

Learned counsel for the petitioner contends that even though, it has been alleged that 3 kgs of opium was recovered from him, which falls in commercial category, still the due process of law for search and seizure was not followed by the police. He further contends that he is in custody for the last about 02 years and 11 months. The prosecution has relied upon 12 witnesses in its report under Section 173 Cr.P.C. and only 04 witnesses have been examined

so far and the next date of hearing before the learned trial Court is fixed on 28.07.2023. He also relied upon the judgement passed by the Hon'ble Supreme Court in the matter of “**Chet Ram @ Ram Veer Vs. Union of India, SLP (Crl.) 1166 of 2023**”, decided on 15.03.2023 and “**Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, SLP(Crl) No.6690 of 2022**”, decided on 25.01.2023.

On the other hand, learned State counsel has vehemently opposed the prayer made by the petitioner on the ground that the recovery of the alleged contraband from the present petitioner is commercial in nature and he is not entitled to grant the concession of bail. He further contends that one more case bearing FIR No.453 dated 20.12.2009, under Sections 18/61/85 of the NDPS Act, at Police Station Tripuri was registered against the present petitioner. However, he does not dispute the fact that the petitioner had already completed his sentence in the said case about 09 years ago. Apart from that, there are two more cases under Section 379 IPC, which was registered against the petitioner in the year 2010 and in one case, he has already undergone the sentence and in another case, he has been bailed out.

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

It is not in dispute that the alleged recovery of the contraband from the present petitioner is commercial in nature and the provisions of Section 37 of the Act would be attracted in such a situation. However, the petitioner cannot be confined in jail in perpetuity and the incarceration for such a longer period would be violative of Article 21 of the Constitution of India. Even the Hon'ble Supreme Court has held in the matter of Dheeraj Kumar Shukla's case (supra)

that in such a case, the condition of Section 37 of the NDPS Act can be dispensed with at this stage and the grant of concession of bail can be considered by this Court.

Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned.

20.07.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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