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AT CHANDIGARH**

**CRM-M-7881-2022**

**Date of Decision: 17.11.2023**

Satish Kumar

...Petitioner

vs.

State of Haryana

...Respondent

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

Present :    Mr. Amit Choudhary, Advocate  
                  for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

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**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 to him in case FIR No.354 dated 23.11.2019 registered under Sections 22-C, 27-A, 61, 85 of NDPS Act, 1985, at Police Station City Ratia, District Fatehabad.

2.                As per case of the prosecution, on 23.11.2019, a police party headed by ASI Surender Singh was present at Bus Stand for crime checking duty. In the meantime, the petitioner was apprehended by the police and on checking of the plastic bag carried by him, 16 bottles of WINCIREX (containing 100 ml each) bearing Batch No.WCRX-1080, MFD-OCt-2019, EXP-SEP-2021 (total weighing 2 kgs 176 grams with the weight of the bottles and 1 kg 952 grams without weight of the bottles) were recovered. After following the process, the petitioner was ordered to be arrested in the present case on 26.11.2019.

3. learned counsel for the petitioner contends that the petitioner was arrested in the present case on 26.11.2019 and is in custody for the last about 4 years. He further contends that in the present case, only 4 witnesses have been examined, out of total 14 witnesses, so far and the prosecution has unreasonably delayed the trial proceedings, just to ensure that the petitioner continues in jail for longer period. Learned counsel for the petitioner further contends that in the present case, there is non-compliance of mandatory provisions of search and seizure and the petitioner is entitled to concession of bail. Learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the matter of SLP No. 6690 of 2022, titled as **“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. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the recovery of contraband from the present petitioner is commercial in nature and rigors of Section 37 of the Act would apply. She next contends that there is one more case under NDPS Act against the present petitioner, however, she admits that the petitioner is on bail in the said case.

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

6. No doubt, the quantity recovered from the petitioner is commercial in nature and the stringent provisions of Section 37 of the NDPS Act would apply to the facts of the instant case. However, it is evident that the petitioner is in custody for the last about 04 years.

7. Consequently, keeping in view the above stated facts and the law laid down by the Hon'ble Supreme Court in the matter of **Dheeraj Kumar Shukla's case (Supra)** , 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.

(N.S.SHEKHAWAT)  
JUDGE

17.11.2023  
hemlata

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