

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

202

CRM-M-9510 of 2022

Date of decision:22.03.2023

Shamsher Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Isha Goyal, Advocate and
Mr. Paramdeep Saini, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

SUVIR SEHGAL, J. (Oral)

This is the third petition filed under Section 439 Cr.P.C., seeking grant of regular bail to the petitioner in case FIR No.20 dated 04.02.2020 registered under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and Section 25 of Arms Act, 1959 at Police Station Jhabal, District Tarn Taran (Annexure P-2).

Version of the prosecution is that FIR (Annexure P-2) has been registered when on suspicion, three young men were stopped. On search .32 bore revolver, 2 live cartridges and 103 grams of heroin were recovered from Jaswant Singh @ Jassa. Recovery of 348 grams and 103 grams of heroin was made from Shamsher Singh (present petitioner) and Baldev Singh @ Kaali, respectively.

Counsel for the petitioner submits that the petitioner is in

custody since 06.02.2020. However, despite the fact that charge was framed on 03.09.2021, the trial is at an initial stage. By placing reliance upon the judgment of Supreme Court in **SLP (Crl.) No(s).6690 of 2022 titled as Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, decided on 25.01.2023**, she submits that benefit of regular bail deserves to be granted to the petitioner as he is suffering incarceration despite enjoying clean antecedents. It is her specific case that both co-accused have been released on bail.

Per contra, State counsel, upon instructions from ASI Gurdeep Singh, has opposed the petition. He submits that contraband recovered from the petitioner falls within the ambit of commercial quantity and rigor of Section 37 of NDPS Act, is attracted. He has filed affidavit dated 29.11.2022 of the Assistant Inspector General of Police, State Special Operation Cell, Amritsar, in compliance of the order passed by this Court. As per his instructions, 01 out of total 14 prosecution witnesses has been examined.

I have considered the submissions made by counsel for the parties.

In the affidavit dated 29.11.2022, it has been deposed on behalf of the State that prosecution undertakes to conclude the entire remaining prosecution evidence on the next date or as is convenient to the Trial Court. Despite the fact that affidavit was executed in November, 2022, there is no improvement in the situation. Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)** has 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 through the charges have been framed.”

This Court is *prima facie* of the opinion that case of the petitioner would fall within the parameters laid down by the Hon'ble Supreme Court. Not only the petitioner is in custody for the last 37 months, but he has clean antecedents and the trial is at a nascent stage.

Without advertng to the merits or demerits of the arguments addressed, petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 22, 2023

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes