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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(296)

CRM-M-12660-2023

Date of decision:- 23.03.2023

Nasir Ahmad Sheikh

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Lavanya Gupta, Advocate  
for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab for State-respondent.

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**SUVIR SEHGAL, J. (ORAL)**

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No.144 dated 12.10.2019, registered for offences under Sections 15 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), at Police Station Maqsudan, District Jalandhar, Annexure P-1.

Counsel submits that alleged recovery of contraband, which falls within the ambit of commercial quantity, has been made from a truck, which was being driven by his cousin brother - Javed Ahmed Sheikh, and the petitioner, who was a co-passenger, has been falsely embroiled. Counsel has placed reliance upon the judgment dated 25.01.2023 passed by the Hon'ble Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj***

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***Kumar Shukla Versus The State of Uttar Pradesh*** and submits that the petitioner, who has clean antecedents, deserves to be enlarged on bail.

Opposing the petition, learned State counsel, upon instructions received from ASI Kewal Singh, has submitted that as the recovery effected falls within the ambit of commercial quantity, bar under Section 37 of the NDPS Act is attracted. He has filed status report dated 22.03.2023 by way of an affidavit of Senior Superintendent of Police, Jalandhar (Rural) in connected petition bearing CRM-M-11031-2022 titled as Javed Ahmed Sheikh Versus State of Punjab and has submitted that examination-in-chief of four out of a total of twelve prosecution witnesses has been recorded and two official witnesses have been given up. He submits that the delay in the trial is for the reason that the offending truck is not being produced by the owner, who is the father of the co-accused, Javed.

I have heard counsel for the parties and considered their respective submissions.

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 though the charges have been framed.”*

Not only that the petitioner has clean antecedents, but she is in custody for the last more than 41 months and the trial is at an initial stage.

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On the basis of these factors as well as the judgment of the Supreme Court, this Court is inclined to accept the prayer made in the petition.

Without adverting to the merits or demerits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)  
JUDGE

23.03.2023

Kamal

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |