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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(202) CRM-M-16810-2022
Date of decision:- 10.05.2023

Abhishek Sharma ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Manpreet Ghuman, Advocate for the petitioner.
Mr. Rohit Bansal, Senior DAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
120	26.08.2020	Dhanaula, District Barnala	21, 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

2. Version of the prosecution is that on the basis of secret information, a motorcyclist was intercepted, who identified himself as Abhishek Sharma, present petitioner, and recovery of 9000 tablets of *Alpax* was recovered from a black bag, which he was carrying on the motorcycle. Subsequently, on the basis of his disclosure statement, recovery of 1800 tablets of *Tramadol* was made.

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3. Counsel for the petitioner contends that the petitioner has been falsely implicated in the criminal case. She submits that the mandatory provisions of the NDPS Act have not been complied with at the time of search and seizure of the alleged contraband. Still further, it is her submission that the petitioner, who is in custody since 01.09.2020, deserves to be enlarged on bail as he is not involved in any other offence under the NDPS Act. Reliance has been placed by her upon the judgment of the Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, decided on 25.01.2023.

4. *Per contra*, learned State counsel has opposed the petition, upon instructions received from SI, Manjit Singh, and has submitted that the recovery effected from the petitioner falls within the ambit of commercial quantity as per the notification issued under the NDPS Act. He has filed status report by way of an affidavit of Deputy Superintendent of Police, Sub Division, Barnala and submits that the challan was presented on 20.02.2021 and charge was framed on 20.08.2021. Still further, he submits that out of twenty one prosecution witnesses, two have been examined and three have been given up. He has filed Custody Certificate dated 09.05.2023, which is taken on record.

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

6. In ***Dheeraj Kumar Shukla's*** case (supra), it has been 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.”

7. Petitioner is in confinement for the last more than thirty two months and the trial is at a nascent stage as sixteen prosecution witnesses are yet to be examined. Although, the petitioner is accused of offences under the Prisons Act, but he is not involved in any other case registered against him under the NDPS Act. This Court is, therefore, satisfied that the case of the petitioner will fall within the four corners of the observations made by the Apex Court in ***Dheeraj Kumar Shukla's*** case (supra).
8. 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.
9. 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

10.05.2023

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No