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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(218) CRM-M-20449-2023
Date of decision:- 27.07.2023

Gurpreet Singh ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Arun Luthra, 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
214	05.10.2020	Bhogpur, District Jalandhar (Rural)	15 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

2. Case of the prosecution is that FIR, Annexure P-1, has been registered on the basis of a secret information. A truck, which was coming from Jammu & Kashmir, was intercepted and recovery of 200 kg poppy husk was effected from 10 bags, weighing 20 kg each.

3. Counsel for the petitioner submits that the petitioner, who was transporting a consignment of apples, was unaware that the contraband was also a part of the consignment. It is his arguments that at the time of search

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and seizure of the vehicle, mandatory provisions of the NDPS Act have not been complied with. He submits that the petitioner, who is languishing in detention since 09.10.2020 and has a clean past, deserves to be released on bail as the trial is proceeding at a tardy pace.

4. *Per contra*, learned State counsel, upon instructions received from ASI, Jaswinder Singh, has opposed the petition and has submitted that the petitioner cannot absolve himself from the responsibility of transporting contraband, which falls within the ambit of commercial quantity. He submits that bar under Section 37 of the NDPS Act is attracted and the petitioner cannot be released on bail. As per his instructions, charge was framed on 17.02.2021 and three out of fourteen prosecution witnesses have been examined.

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

6. Hon'ble 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, has observed 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. Noticing the stage of the trial, length of custody of the petitioner, which by now is thirty three months and his unblemished past, this Court is of the view that his case will fall within the parameters laid down by the Hon’ble Supreme Court in *Dheeraj Kumar Shukla's* case (supra) and he deserve to be enlarged on bail during the pendency of trial.
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/Trial Court 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

27.07.2023
Kamal

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