

CRM-M-22231-2023 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(210) CRM-M-22231-2023
Date of decision:- 09.05.2023

Sagar ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ranbir Singh Sekhon, Advocate for the petitioner.
Mr. Rohit Bansal, Senior DAG, Punjab for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This is the second 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
83	13.04.2019	City Ferozepur, District Ferozepur	21 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

2. Version of the prosecution is that a car with three occupants was intercepted on the basis of secret information and recovery of 750 grams of *heroin* was effected. Subsequently, on the basis of disclosure statement, two *desi kattas*, one pistol, three live cartridges and drug money of Rs.17,020/- was recovered.

3. Counsel for the petitioner submits that the petitioner was an innocent traveler in the vehicle, which does not belong to him. He submits that no recovery has been effected from the petitioner and the recovery of *heroin* is alleged to have been effected from underneath the navigator seat. Counsel submits that the disclosure statement on the basis of which recovery of arms and cartridges have been made, is inadmissible in evidence. Still further, it is his case that the mandatory provisions of the NDPS Act have not been complied with at the time of search and seizure. Counsel for the petitioner has drawn parity with the case of the co-accused, who have been granted bail by this Court vide order dated 20.04.2023, Annexure P-3. Reliance has been placed by him 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 ASI, Harnek Singh, and has submitted that five out of thirteen prosecution witnesses have been examined and one has been given up. He submits that as the recovery effected falls within the ambit of commercial quantity, rigor of Section 37 of the NDPS Act is attracted. He has opposed the petition by making a reference to the antecedents of the petitioner as are reflected from the Custody Certificate.

5. I have heard 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 custody for the last more than forty eight months and the trial has not even reached half way. In so far as the antecedents of the petitioner are concerned, he is involved in two other criminal cases registered against him for offences under IPC. In the third case, he has been acquitted for offence under NDPS Act by order dated 22.11.2022. This Court is, therefore, of the opinion that the case of the petitioner will fall within the parameters laid down by the Apex Court in **Dheeraj Kumar Shukla's** case (supra) and he deserves to be enlarged on bail.
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

09.05.2023
Kamal

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