

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(221)

CRM-M-26747-2023
Date of decision:- 26.07.2023

Keshav

... Petitioner

Versus

The State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Shailender Kashyap, Advocate and
Mr. Parshant Sethi, Advocate for the petitioner.

Mr. Munish Sharma, DAG, Haryana
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
335	29.08.2020	Adarsh Nagar, Faridabad, Haryana	20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”)

2. Version of the prosecution is that FIR, Annexure P-1, has been registered on the basis of a secret information. A Eeco car with four occupants was intercepted and a recovery of 63.278 kgs of *Ganja* was effected from the plastic bags in boot of the car.

3. Counsel for the petitioner submits that the petitioner was driving the vehicle, which belongs to his mother, as a Taxi and the contraband allegedly recovered does not belong to him. He submits that he had been engaged by the co-accused, who were travelling with the plastic bags. Counsel submits that co-accused, Mohd. Sanajir, has been released on bail

by this Court vide order dated 19.04.2023, Annexure P-5. Still further, by placing reliance upon the judgments 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 and ***Special Leave to Appeal (Crl.) No.1166 of 2023*** titled as ***Chet Ram @ Ram Veer Versus Union of India***, decided on 15.03.2023, counsel submits that the petitioner is entitled to be released on bail as he is in custody since 30.08.2020 and there is a remote possibility of an early conclusion of the trial.

4. *Per contra*, State counsel, upon instructions received from ASI, Netrapal, has opposed the petition and has submitted that as the prohibited substance recovered from the vehicle falls within the ambit of commercial quantity, rigor of Section 37 of the NDPS Act is attracted. As per his instructions, trial is underway.

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

6. Hon'ble Supreme Court in ***Dheeraj Kumar Shukla's*** case (supra), 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. Petitioner is is in detention for the last more than twenty eight months, he is not involved in any other criminal case and there is a little possibility of an early conclusion of the trial. This Court is, therefore, satisfied that petitioner’s case falls within the parameters laid down by the Supreme Court in ***Dheeraj Kumar Shukla's*** case (supra) reproduced above.
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

26.07.2023
Kamal

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