

211 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-35067-2023

Date of Decision:03.10.2023

Mohammed Shakir @ Rehman

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr.Saurabh Sharma, Advocate
 for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No. 12 dated 08.08.2020 registered under Sections 21 and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sector-9, Ambala City, District Ambala.

2. As per the case of the prosecution, the petitioner had sold the contraband in question i.e. 50 vials of Avil 10 ML and 50 vials of Buprenorphine Injection IP (Leejesic) to the co-accused, who was found possessing the same.

3. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case and no recovery was effected from the present petitioner. He further contends that the petitioner was arrested in the

present case on 22.09.2020 and three more cases under NDPS Act were registered against the present petitioner, but he is on bail in those cases. He further contends that the trial has been unnecessarily delayed by the prosecution, without any fault on his part. Learned counsel for the petitioner has relied upon the law laid down of the Hon'ble Supreme Court in the matter of SLP No.6690 of 2022, titled as **“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”**, in which the Hon'ble Supreme Court has held as follows:-

“2. The allegations are that on a secret information, the police authorities intercepted two vehicles on 23.06.2020 i.e. one 'Gray' coloured 'Honda City' car and the second 'White' coloured ' Swift Dzire' car. On an interrogation at the spot, Praveen Maurya @ Puneet Maurya, Rishab Kumar Maurya and Dheeraj Kumar Shukla were found to be occupants of the 'Honda City' car whereas the petitioner was driving the 'Swift Dzire' car. On taking a search, more than 92 kgs. Ganja was allegedly recovered from 'Honda City' car where as more than 65 kgs. Ganja was recovered from 'Swift Dzire' Car. The accused were arrested at the spot. The petitioner is, thus, in custody since 24.06.2020.

3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. 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.

4. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the

satisfaction of the Trial Court.”

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the recovery of contraband from the present petitioner is commercial in nature and the stringent provisions of Section 37 of the NDPS Act would be attracted in the present case. Thus, the petitioner does not deserve the concession of bail.

5. I have heard learned counsel for the parties and with their able assistance, I have gone through the record of the case.

6. No doubt, the quantity of recovered contraband would fall in the 'commercial category' and the provisions of Section 37 of the NDPS Act would be attracted in the present case; however, it is also borne out from the record that the petitioner is in custody for the last more than 02 years and 10 months. Even the prosecution could not bring on record any material, which would show that the trial has been delayed on account of any fault on the part of the present petitioner. Thus, the 'right to speedy trial' of the petitioner as enshrined in Article 21 of the Constitution of India is violated and the conditions as mentioned in Section 37 of the NDPS Act can be dispensed with at this stage for the limited purpose of grant of concession of bail.

7. Consequently, keeping in view the above stated facts and the law laid down by the Hon'ble Supreme Court in the matter of **Dheeraj Kumar Shukla's case (Supra)**, the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned subject to the following conditions:-

- (i) *The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
- (ii) *The petitioner shall remain present before the Court on the dates fixed for hearing of the case.*
- (iii) *The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.*
- (iv) *The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.*
- (v) *The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.*
- (vi) *In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.*
- (vii) *The concerned Court may insist on two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.*
- (viii) *The petitioner shall report every 1st and 3rd Monday of English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard.*

03.10.2023

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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No