

221

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

**CRM-M-35657 of 2023
Date of Decision:31.07.2023**

Shabhaj Shah

...Petitioner

VS.

State of Punjab

...Respondent

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

Present : Mr. Rajpal Singh Chauhan, Advocate
for the petitioner.

Mr.M.S.Bajwa, Deputy Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

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. 0009 dated 19.01.2021 registered under Section 21(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Talwandi Chaudharian, District Kapurthala.

As per FIR (Annexure P-1), on 19.01.2021, a police party headed by ASI Harjinder Singh was present at Talwandi Chaudharian and in the meantime, a secret information was received that three Kashmiri persons were coming in a six tyres truck, who supply heroin and intoxicant substance in the area. Even on that day, they were present in the truck and were looking for customers. After sometime, the truck bearing Registration No. JK-05-D-5194

was seen coming from the side of Grain Market, Talwandi Chaudharian and on getting the signal by the secret informer, the truck was stopped. With the help of other police officials, three persons were apprehended at the spot and their names and addresses were inquired. They disclosed their names and addresses as Salman Sheikh son of Abdul Rashid Sheikh resident of Sheelu Tehsil Sopore, District Baramulla, Jammu and Kashmir, Shabaaz Shah son of Mohammad Asif Shah son of Sheelu, Tehsil Sopore, District Baramulla, Jammu and Kashmir and Peer Mohammad Maqbool son of Peer Jalaludin Maqbool resident Handwara Pila District Kupwara, Jammu and Kashmir. Thereafter, the search was conducted and 1 kg 600 grams heroin was recovered from Peer Mohammad Maqbool, 900 grams of heroin was recovered from Salman Sheikh and 1 kg heroin was recovered from Shahbaaz Shah, present petitioner. With these main allegations, the FIR in the present case was registered against the present petitioner and others under Section 21(C) and 29 of NDPS Act, 1985.

Learned counsel for the petitioner contends that a false case has been planted on the petitioner and no recovery was effected from him. In fact, the petitioner was only a gratuitous traveller in the truck and the recovery of contraband had taken place from some other persons. Learned counsel further contends that the mandatory provisions of Act with regard to search and seizure had not been followed in the present case. Apart from that, the petitioner was arrested in the present case on 19.01.2021 and has been incarcerated since then. He further contends that only 02 witnesses, out of total 14 witnesses, have been examined and the conclusion of the trial may take quite a long time. He further submits that there is no other case pending against him. Learned counsel for the

petitioner has also 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.”

Learned counsel appearing on behalf of the State of Punjab has vehemently opposed the grant of concession of bail to the present petitioner on the ground that the quantity of contraband recovered from the present petitioner is commercial in nature. He further contends that the petitioner was aware of

the fact that the alleged contraband was being transported in the vehicle, in which the petitioner was also travelling.

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

No doubt, the quantity recovered from the petitioner is commercial in nature and the stringent provisions of Section 37 of the NDPS Act would apply to the facts of the instant case. However, it is evident from the custody certificate that the petitioner is in custody since 19.01.2021 i.e. for the last more than 02 years and 06 months and even the trial is at an initial stage. 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.

In case, the petitioner involves in future in any other similar case, the respondent shall at liberty to move an application for cancellation of bail granted to the petitioner by this Court. Apart from that, the present petitioner is directed to report to SHO, Police Station, Talwandi Chaudharian, District Kapurthala on every first Monday of English calendar month and his presence shall be marked in the roznamcha of the said police station.

31.07.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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