

CRM-M-46813 of 2022[1]2023:PHHC:054881

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

204

CRM-M-46813 of 2022
Date of decision:19.04.2023

Mohd. Sanajir

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

1. This is the third petition filed under Section 439 Cr.P.C., seeking grant of regular bail to the petitioner in:-

FIR No.	Dated	Police Station	Section
335	29.08.2020	Adarsh Nagar, District Faridabad	20 of the 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 when on the basis of secret information, a car with four occupants was intercepted and recovery of seven plastic bags of prohibited substance was effected. The contraband recovered was found to be containing 63.278

kilograms of Ganja.

3. Counsel for the petitioner has contended that petitioner was innocent traveller in the vehicle and was sitting on the rear seat. He urges that neither any recovery was effected from the petitioner nor was he owner of the vehicle. Counsel submits that petitioner is in custody since 29.08.2020 but the trial is not progressing. He has placed reliance upon the judgment of Hon'ble Supreme Court in **SLP (Crl.) No(s).6690 of 2022 titled as Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, decided on 25.01.2023.** He asserts that the petitioner deserves to be released on bail as he has a clean past. Still further, he submits that co-accused, Sanjir has been released on bail by this Court, vide order dated 27.07.2021 and the petitioner is similarly placed.

4. Opposing the petition, State counsel, upon instructions from ASI Taleem Hussain submits that contraband recovered from the petitioner falls within the ambit of commercial quantity and the bar under Section 37 of the NDPS Act, is attracted. He submits that all the four accused are hand in glove with each other and are involved in smuggling of contraband. As per his instructions, 08 out of total 15 prosecution witnesses have been examined.

5. I have heard counsel for the parties.

6. Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)** has held as under:-

“....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 through the charges have been framed.”

7. Noticing that petitioner is in custody for the last more than 31 months, he has unblemished past and trial is at a nascent stage, this Court is inclined to accept the prayer made in the petition.
8. Without adverting to the merits or demerits of the arguments addressed, petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
9. It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

April 19, 2023

savita

(SUVIR SEHGAL)
JUDGE

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