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

**CRM-M-53626 of 2022
Date of Decision:31.07.2023**

Rakesh Kumar @ Kesha

...Petitioner

vs.

State of Punjab

...Respondents

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

Present : Mr. K.S.Brar, 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.246 dated 11.12.2020 (Annexure P-1) registered under Section 21(C), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 25 of Arms Act, 1959, at Police Station Lohian, District Jalandhar.

As per story of the prosecution, a secret information was received by a police party headed by Jarnail Singh, Inspector, CIA and the secret informer informed that Parminder Singh @ Bhinda, who was confined in jail at Ferozepur, was indulging in smuggling of heroin at large scale from jail and was also selling it through his friends Rakesh Kumar @ Kesha son of Balwant Singh, resident of Khurla Pur P.S. Mehatpur and Jaswinder Singh son of

Sukhdev Singh, resident of Fatehpur Bhangua, P.S. Lohian. Even Gursewak Singh son of Gurcharan Singh, resident of Behbalpur, Patiala had procured a consignment of heroin and illegal arms from Sri Nagar in car bearing registration No.JK-01-E-2277. On that day, Rakesh Kumar @ Kesha and Jaswinder Singh were weighing and making further arrangements at the house of Jaswinder Singh situated in the fields and if raid was conducted, then huge quantity of heroin and illegal arms could be recovered from them. With these main allegations, the FIR in the instant case was registered by the police. Later on, 2 kgs of heroin was recovered from each of the accused, namely, Jaswinder Singh and Rakesh Kumar, who were working at the instance of Palwinder Singh @ Pinda, main accused. Even one pistol of 7.65 (.32 bore) and five live catridages were also recovered from the present petitioner.

Learned counsel for the petitioner contends that neither the petitioner was present at the spot nor any recovery was effected from him. The petitioner along with his co-accused had been arrested from their house and the recovery was planted on him. Further, in the present case, Gursewak Singh was also named as one of the accused in the secret information, however, he has been granted the concession of bail by this Court vide order dated 28.10.2022 (Annexure P-4). Learned counsel further contends that the petitioner was arrested in the present case on 21.12.2020 and is continuing in custody for the last more than 2 years and 7 months. No other criminal case is pending against him and his further incarceration will serve no meaningful purpose. Learned counsel further contends that only five witnesses, out of total 17 witnesses, have been examined by the prosecution and the prosecution has intentionally delayed the trial before the learned trial Court. Thus, the conclusion of the trial will take

quite a long time. 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.

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 21.12.2020 i.e. for the last more than 02 years and 07 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, Lohian, District Jalandhar 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