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

CRM-M-41738-2024**Date of Decision: 15.10.2024**

Lakhwinder Singh

...Petitioner

vs.

State of Punjab

...Respondent

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

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

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

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail to him in case FIR No.61 dated 14.04.2022 registered under Sections 18 and 29 (added later) of NDPS Act, at Police Station Baghapurana, District Moga.

2. As per case of the prosecution, the FIR was lodged against Avtar Singh Sangha from which one kilogram opium had been recovered from their possession. As per case of the police, Avtar Singh told the police during investigation that he purchased the abovesaid opium from Lakhwinder Singh, petitioner and he is coming on black colored Creta to supply the opium. If naka is laid, he can be apprehended red handed. Accordingly, the present petitioner was nominated as an accused in the present case. On search of vehicle, three polythene bags were found near conductor seat. On checking, total 09 kilograms opium was recovered from the present petitioner, which falls under the commercial quantity.



3. Learned counsel for the petitioner submits that the petitioner was arrested in the present case on 14.04.2022 and has undergone about 02 years and 04 months of custody. He further submits that the petitioner has been falsely involved in the present case. Learned counsel for the petitioner has relied upon the law laid down by 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 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 submissions made by learned counsel for the petitioner on the ground that the quantity of contraband recovered from the petitioner is commercial in nature and the rigors of Section 37 of NDPS Act would apply to the facts of the present case.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, the petitioner was arrested on 14.04.2022 and is in custody for the last about 02 years and 04 months. There is no other criminal case against him.

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 sureties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.

8. Pending application, if any, is also disposed of.

15.10.2024.
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(N.S.SHEKHAWAT)
JUDGE

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