

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

213

CRM-M-2119-2023

Date of decision: 04.09.2023

Jeevan Singh @ Jimma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kanwaljeet Singh Brar, Advocate for
Mr. J.S. Sandhu, Advocate for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (second) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.31 dated 17.03.2021 under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Raman Bathinda, District Bathinda.

2. Learned counsel for the petitioner submits that after the petitioner was arrested on 17.03.2021, charges were framed on 10.09.2021, however, it was a matter of record that only 05 prosecution witnesses out of the 09 cited had been examined till date. Learned counsel, in support, has placed on record a copy of the zimni orders subsequent to the presentation of challan on 06.09.2021. Learned counsel has drawn the attention of this Court to the zimni orders with effect from 23.12.2021 onwards and asserted that it was evident that despite the case being adjourned repeatedly on more than 15 dates, the prosecution witnesses had failed to put in an appearance. Learned counsel submits that on two occasions the Court had ordered the salary of the prosecution witnesses to be attached, however, still prosecution

witnesses had failed to show up during trial. Learned counsel submits that in the case in hand it is a matter of record that all the prosecution witnesses are official witnesses and hence, it is evident that the delay in the conclusion of the trial has been only because of the non-appearance of these witnesses. He submits that the petitioner cannot be made to languish in custody for reasons not attributable to him, but to the prosecution itself. He has relied upon a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]* to contend that repeated adjournments in such like situation seriously affect the Fundamental Rights under Article 21 of the Constitution of India.

3. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Charanjeet Singh, has submitted that no doubt on a few dates the prosecution witnesses had failed to put in an appearance and even the salaries of some prosecution witnesses had been ordered to be attached by the Trial Court, however, on the next date of hearing i.e. 12.09.2023 there was every likelihood that the prosecution witnesses would be examined. He has submitted that since a recovery of 1500 tablets of Tramadol was effected from the petitioner, he did not deserve the concession of bail.

4. On a pointed query put to the learned State counsel as to whether the petitioner has any criminal antecedents, he on instructions, has replied in the negative.

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

6. The petitioner has been in custody since 17.03.2021 and even after more than 02 years and 06 months the trial has not concluded on account of reasons not attributable to him.

7. Hon’ble Supreme Court in *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022)* decided on **25.01.2023** has observed 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 though the charges have been framed.”

8. In the facts and circumstances as enumerated hereinabove and in view of the petitioner not being involved in any other criminal case much less under the NDPS Act, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act.

9. Accordingly, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

10. Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

04.09.2023

(MANJARI NEHRU KAUL)

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JUDGE

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