

Neutral Citation No.2023:PHHC:158825
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16023 of 2023 (O&M)

Date of decision : 12.12.2023

...

Parkash Kaur

.....Petitioner

vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Sandeep Kumar, Deputy Advocate General,
Punjab, for the respondent/State

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MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of regular bail under Section 439 Cr.P.C., in case FIR No.75 dated 8.4.2022 under Sections 21 of Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as 'the NDPS Act') (offence under Sections 23, 29 of the NDPS Act added later on), registered at Police Station Sadar Ferozepur, District Ferozepur.

2. Learned counsel for the petitioner, inter alia contends that her false implication in the instant case is fortified from the fact that she has clean antecedents as she is not involved in any other criminal case, much less, under the NDPS Act; the alleged recovery of 920 grams of herione was not even effected from her fields but from the Patrol Track along the Indo-Pak Border. Learned counsel has further submitted that after she was arrested on 8.4.2022, only 01

prosecution witness, out of the 20 cited, had been examined till date. Hence there was no likelihood of the trial concluding in the near future.

3. Per contra, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Sukhbir Singh, has not disputed that the recovery of contraband had not been effected from the fields of the petitioner, but from the Patrol Track adjoining the fields of the petitioner. It has also not been disputed that it was a case of chance recovery and furthermore, the petitioner is not involved in any other criminal case. However, he submits that after the petitioner was arrested on 8.4.2022, she suffered a disclosure statement, wherein she nominated three other persons, who too were involved in the sale and purchase of narcotic substances. Learned State counsel has, on further instructions, apprised the Court that the next date of hearing before the trial Court is 15.12.2023, when the examination-in-chief of the one prosecution witness, is likely to be concluded.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. In the facts and circumstances, as enumerated hereinabove, there is no likelihood of the trial concluding in the near future, as after the charges were framed on 21.10.2022, only one prosecution witness has been partly examined. The delay in the conclusion of the trial has been on account of the non-appearance of the prosecution witnesses, for which the petitioner cannot be made to languish in custody.

6. 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.”

7. In view of the above, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act.

8. Accordingly, the instant petition as such is allowed and the petitioner is 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.

9. Needless to say, in case the petitioner misuses the concession of bail granted to her, the State would be at liberty to seek cancellation of the same.

(**MANJARI NEHRU KAUL**)
JUDGE

12.12.2023
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No