

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21419-2023
Decided on : 28.08.2023

Inderpal Singh @ Inder

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rajiv K. Saini, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.20 dated 02.02.2021 under Sections 21-C, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station STF, District SAS Nagar (Mohali).

2. Learned counsel for the petitioner has reiterated that despite charges having been framed more than two years back on 12.08.2021, not even a single prosecution witness out of the 21 prosecution witnesses cited have been examined till date. Learned counsel has further submitted that it is also a matter of record that the petitioner has no criminal antecedents and is not even involved in any other criminal case much less under the NDPS Act. Learned counsel has yet again reiterated his submissions made on the last date of hearing that the trial has failed to make any progress and the

delay had been only for reasons attributable to the prosecution and prosecution alone. Learned counsel has thus, vehemently urged that the petitioner cannot not be made to languish in judicial custody for no fault of his. In support, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Dheeraj Kumar Shukla vs. State of Uttar Pradesh (SLP (Crl.) No.6690/2022) decided on 25.01.2023*** wherein on account of the long custody period of the petitioner coupled with the fact that the trial had not made any progress, the Hon'ble Apex Court had granted bail to the accused by dispensing with the conditions of Section 37 of the NDPS Act.

3. Per contra, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, on instructions, has submitted that a recovery of 1.20 kgs of Heroin was effected from the conscious possession of the petitioner and hence, in view of the bar created under Section 37 of the Act, he did not deserve the concession of bail. Learned State counsel, however, has not been able to dispute that the petitioner has clean antecedents as he is not involved in any other criminal case much less under the NDPS Act. It has also not been disputed that after the charges were framed more than two years back, none of the prosecution witnesses had been examined. Learned State counsel, however, submits that there is every likelihood that on the next date of

hearing before the trial court, some prosecution witnesses would be examined.

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

5. It is a matter of record that the petitioner has been in custody for more than two years and seven months after having been arrested on 02.02.2021. No doubt, the alleged recovery has been classified as commercial quantity under the NDPS Act, however, the fact remains that the trial has come to a virtual stand still on account of either the accused not being produced before the trial court on various dates or on account of the prosecution witnesses, who admittedly in the case in hand are official witnesses, failing to appear before the trial court to get their evidence recorded.

6. Hon'ble Supreme Court in *Dheeraj Kumar's case(supra)* 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 the facts and circumstances as enumerated hereinabove, since the trial has not yet commenced and the petitioner has been in custody since 02.02.2021, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the Act. Accordingly, the present petition is allowed. The petitioner be admitted to bail to the satisfaction to the trial Court/Duty Magistrate concerned.

8. 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. Needless to add, in case the petitioner is found misusing the concession of bail granted to him by this Court or is found involved in any other criminal case, the respondent-State would be at liberty to seek cancellation of bail granted to him by this Court.

28.08.2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable :	Yes