

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

CRM-M No.38930 of 2023

Date of decision: 19th September, 2023

Hukam Pal @ Nanni

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Bhupinder Ghai, Advocate for the petitioner.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.310 dated 24.05.2021 under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Zirakpur, District SAS Nagar (Mohali).

2. Learned counsel for the petitioner inter alia contends that the petitioner has been in custody for more than two years and four months, having been arrested on 24.05.2021 for being found in possession of 5400 tablets of Lomotil (containing Diphenoxylate Hydrochloride & Atropine Sulphate) and 1900 tablets of Tramadol Hydrochloride. Learned counsel submits that a false case having been planted upon the petitioner is evident from the fact that he has clean antecedents and is not involved in any other criminal case, much less under the NDPS Act. It has been

further submitted that the trial has been proceeding at a very slow pace as after charges were framed on 27.10.2021, only 5 prosecution witnesses had been examined till date. He submits that in the circumstances, further incarceration of the petitioner would serve no useful purpose.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Nirmal Kaur, has not been able to dispute that the petitioner is not involved in any other criminal case and also that after charges were framed almost two years back, only 5 out of the 11 prosecution witnesses cited had been examined. He, however, submits that the recovery effected from the petitioner is classified as commercial quantity under the NDPS Act.

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

5. The petitioner has now been in custody since 24.05.2021 and seeing the progress made before the trial Court, there is no likelihood of the trial concluding in the near future.

6. Hon'ble the 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 the facts and circumstances as enumerated hereinabove and the observations made by Hon’ble the Supreme Court in ***Dheeraj Kumar Shukla’s case (ibid)***, this Court deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. 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.

8. Needless to add here, in case the petitioner misuses the concession of bail, the State would be at liberty to approach this Court for cancellation of bail in the instant case.

(MANJARI NEHRU KAUL)
JUDGE

September 19, 2023
rps

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