

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

237

2023:PHHC:151677

CRM-M-41457-2023

Date of decision: November 29th, 2023

Pappu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Niraj Sinhmar, Advocate
for the petitioner.

Mr. Rahul Mohan, Senior Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This is a second petition filed by the petitioner seeking the concession of regular bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.169 dated 06.06.2019 lodged under Sections 21, 27, 61, 29, 85 of the NDPS Act at Police Station Sadar Jind.

2. Learned counsel for the petitioner submits that after the previous petition was withdrawn on 27.10.2022, the trial had not proceeded any further and as on date, only one prosecution witness out of the 18 had been examined. He submits that in the circumstances, the petitioner could not be made to languish in custody for reasons not attributable to him but only to the prosecution as the case was being adjourned time and again on account of the non-examination of the prosecution witnesses. It has been further submitted that the petitioner has now been in custody for more than three years having been arrested on 06.06.2019 and he is not involved in any other criminal case much less under the NDPS Act.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that a secret information was received qua the involvement of the petitioner in the sale and purchase of narcotic substances; when he was apprehended by the police, recovery of 3.450 kilograms of smack (commercial quantity) was effected. Learned State counsel has, however, not been able to dispute that only one prosecution witness has been examined till date, however, he submits that three other prosecution witnesses had been given up as unnecessary. It has been further submitted that the next date fixed before the trial Court is 15.12.2023 when four out of the 14 prosecution witnesses have been summoned to depose.

4. On a pointed query put to the learned State counsel, he, on instructions, has not controverted the submissions made by the counsel opposite qua the petitioner having clean antecedents.

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

6. The petitioner has been in custody for more than four years having been arrested on 06.06.2019. There is no likelihood of the trial concluding in the near future as 14 prosecution witnesses still remain to be examined.

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

November 29th, 2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No