

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

213

2023:PHHC:103500

CRM-M-48209-2021

Date of decision: August 8th, 2023

Vicky

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Luvinder Sofat, Deputy Advocate General, Punjab.

Ms. Trishanjali Sharma, Deputy Advocate General,
Haryana.

Mr. G.S. Saini, Advocate
for Mr. Charanjeet Singh Bakhshi, Advcoate
for U.T. Chandigarh.

MANJARI NEHRU KAUL, J.

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.0165 dated 25.06.2021 registered under Sections 21 and 22 of the NDPS Act, 1985 (Section 29 of NDPS Act added later on) at Police Station Anaj Mandi, District Patiala.

Learned counsel for the petitioner, *inter alia*, contends that a false recovery of ten bottles of ELTUREX has been planted upon the petitioner in a case of chance recovery. He further submits that the mandatory provisions of the NDPS Act i.e. Section 50 were not complied with as the search was not conducted in the presence of any gazetted officer. It has still further been submitted that co-accused Monika had already been extended the concession of bail by this Court.

Learned counsel submits that the petitioner has now been in custody for more than two years and only three out of the 12 prosecution witnesses have been examined so far. Hence, the trial is unlikely to conclude in the near future.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has submitted that the petitioner is a man of criminal antecedents and is involved in two more cases under the NDPS Act. He has further apprised this Court that the directions issued by this Court vide order dated 09.09.2022 were complied with and the sample was found to fall under the commercial quantity and hence, the bar of Section 37 of the Act would also apply in the case in hand. It has further been submitted that in case the petitioner is enlarged on bail, there was every possibility that he could abscond or yet again be involved in other cases under the NDPS Act as the petitioner committed the crime in question while he was on bail in the other criminal cases which were pending against him. Hence, it was evident that he had misused the concession of bail granted to him.

On a pointed query put to the learned State counsel qua the progress of the trial, he has apprised the Court that the next date of hearing before the trial Court is 14.09.2023 when three more witnesses are likely to be examined. It has further been submitted that the trial shall not take much time to conclude as after 14.09.2023, only five witnesses would remain to be examined, who in all likelihood are just formal witnesses.

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

Prima facie, the petitioner comes across as being a habitual offender. It is a matter of record that he is involved in two more cases under the NDPS Act. Still further, he was on bail in the other cases registered against him, when the crime in question was committed. He has thus, clearly misused the concession of bail granted to him in the other NDPS cases. The petitioner cannot even seek parity with that of the co-accused, who has since been extended the concession of bail as admittedly and not disputed by the learned counsel for the petitioner, she was not involved in any other criminal case. In the wake of the criminal antecedents of the petitioner, coupled with the fact that the trial shall not take much time to conclude, this Court does not deem it fit to extend the concession of bail to the petitioner.

The instant petition, therefore, stands dismissed. However, as the petitioner has been in custody since 25.06.2021, the trial Court shall make earnest efforts to expedite the trial and conclude it expeditiously preferably within five months from the date of this order.

It is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 8th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No