

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

**CRM-M-42747-2023 (O&M)
Date of decision-30.11.2023**

Jaspreet Singh @ Preeti

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Manoj Kumar, Advocate for the petitioner.

Mr. Mohit Kapoor, Addl. A.G., 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.203 dated 28.07.2021 under Section 22 of NDPS Act, 1985 registered at Police Station Anaj Mandi, Patiala.
2. Status report by way of affidavit of Jaswinder Singh Tiwana, PPS, Deputy Superintendent of Police, City 2, District Patiala has been filed and the same is taken on record subject to just exceptions. Copy has been supplied to the counsel opposite.
3. Learned counsel for the petitioner, inter alia, contends that the petitioner is victim of false implications; he was arrested on 28.07.2021 for having been found in possession of 2400 tablets of 'Parvion Spas'. It has been submitted that the petitioner has been falsely implicated which finds credence from the fact that he is not involved in any other case under the NDPS Act. It has also been submitted that after the challan was presented on 26.10.2021 and

charges framed on 24.03.2022, however, only one prosecution witness out of the nine cited had been examined till date. Hence, the petitioner could not be made to languish in custody for reasons not attributable to him but to the prosecution and prosecution alone as it was a matter of record that all the prosecution witnesses in the case in hand, who are police officials, had not been stepping into the witness-box to get their evidence recorded.

4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has not disputed that only one prosecution witness stands examined, however, he submits that the recovery effected from the petitioner has been classified as commercial under the NDPS Act. This Court has also been informed that the next date before the trial Court is 15.01.2024, when some prosecution witnesses are likely to be examined. Learned State counsel has, however, not been able to dispute that the delay in the trial has been only on account of the prosecution witnesses not appearing during the course of trial for getting their evidence recorded. Learned State counsel has however, submitted that though the petitioner is not involved in any other case under the NDPS Act, but, he has previously been involved in a case under the Excise Act as well as for an offence under Section 307 of the Indian Penal Code, 1860.
5. I have heard learned counsel for the parties and perused the material placed on record.
6. The petitioner has been in custody since 28.07.2021. The trial is unlikely to conclude in the near future.
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.

(MANJARI NEHRU KAUL)
JUDGE

30.11.2023
geeta

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No