

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

221

2023:PHHC:127607

CRM-M-43780-2023

Date of decision: October 3rd, 2023

Manpreet Singh alias Chogu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vikas Gupta, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.126 dated 12.09.2021 under Section 21 of the NDPS Act, 1985, registered at Police Station Sirhali, District Tarn Taran.

2. Learned counsel for the petitioner submits that even though the petitioner was arrested on 12.09.2021, however, till date charges had not even been framed. Hence, the petitioner could not be made to languish behind bars, for no fault of his. While drawing the attention of this Court to Annexure P-2, zimni orders of the trial Court, it has been further submitted that perusal of the same reveal that the case had been adjourned by the trial Court on almost all the dates as the jail authorities had failed to produce the petitioner before it. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another 2022 (10) SCC 51* to contend that repeated

adjournments in such like situation seriously affect the Fundamental Rights under Article 21 of the Constitution of India.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not been able to dispute that the trial has come to a virtual standstill after the challan was presented on 03.03.2022 as charges had not yet been framed. However, he submits that the next date fixed before the trial Court is 13.10.2023 and the jail authorities would ensure that the petitioner is produced before the trial Court, either in person or through video conferencing. It has further been submitted that when the petitioner was nabbed, he was found to be in conscious possession of 300 grams of heroin.

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

5. Depriving an individual of his personal liberty without ensuring a prompt trial, would be inconsistent with Article 21 of the Constitution of India. No doubt, the gravity and heinous nature of an offence may warrant consideration when exercising discretion in releasing an accused on bail, however, at the same time, it is equally important to give due weight to the extended incarceration of an accused as an undertrial prisoner. In the case in hand, the petitioner has been in custody for more than two years having been arrested on 12.09.2021 and it is a matter of record, and as not disputed that after the challan was presented way back on 03.03.2022, charges have not been framed yet, for reasons admittedly not attributable to the petitioner.

6. Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh SLP (Crl.) No.6690/2022*** decided on 25.01.2023 has also 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, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act.

8. Accordingly, the instant petition is allowed. The 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.

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

October 3rd, 2023

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**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No