

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

**CRM-M-44978-2023 (O&M)
Date of decision-30.11.2023**

Mandeep Singh @ Sonu

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present: Mr. Prabhdeep Singh Toor, 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.95 dated 03.07.2021 under Section 22 of NDPS Act, 1985 registered at Police Station STF Mohali, District SAS Nagar, Punjab.
2. Learned counsel for the petitioner, inter alia, contends that the petitioner has been in custody since 03.07.2021 for having allegedly been found in possession of 9000 tablets of 'Tramadol'. It has been submitted that after the challan was presented way back on 14.10.2021, charges were framed thereafter on 11.05.2022, however, till date the prosecution evidence had not yet concluded as only 3 out of 17 witnesses cited by the prosecution had been examined. It has been asserted by the learned counsel that the delay in the conclusion of the trial has been on account of the non appearance of the prosecution witnesses for which the petitioner cannot be made to languish in custody. It has also been submitted that the petitioner has clean

antecedents as 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, on instructions, has submitted that the recovery effected from the petitioner has been categorized as commercial under the Act and hence, he does not deserve to be enlarged on bail. Learned State counsel has, however, not been able to controvert that the delay in the trial has been only on account of the non appearance of the prosecution witnesses and as on date, only three prosecution witnesses stand examined. On a pointed query put to the learned State counsel as to whether the petitioner is involved in any other criminal case, he on instructions, has replied in the negative.
4. I have heard learned counsel for the parties and perused the material placed on record.
5. The petitioner has been in custody for almost two and a half years having been arrested on 03.07.2021. There is no likelihood of the trial concluded in the near future.
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 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. 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 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
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No