

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

1. CRM-M No.54096 of 2021 (O&M)

Gurmeet Kaur

... Petitioner

Versus

State of Punjab

... Respondent

2. CRM-M No.15572 of 2023

Ninder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

Date of decision: 11th September, 2023

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Karandeep S. Sidhu and Mr. Karanjeet S. Brar,
Advocates for the petitioners.

Mr. I.P.S. Sabharwal, Deputy Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners are seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.389 dated 13.11.2020 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Lambi, District Sri Muktsar Sahib.

2. Learned counsel for the petitioner inter alia contends that on the face of it, it is a case of false implication. It has been submitted that as per the admitted case of the prosecution, even though a secret information was received qua the involvement of both the petitioners in

the crime in question, however strangely, no gazetted officer was joined nor any offer made to the petitioners to get their search effected in the presence of a gazetted officer, hence there had been blatant non-compliance of the mandatory provisions of Section 50 of the NDPS Act. It has been further submitted that the petitioners have clean antecedents as they are not involved in any other criminal case much less under the NDPS Act. Learned counsel further submit that after the challan was presented on 05.05.2021, only 6 out of the 19 prosecution witnesses cited, have been examined till date, hence, the trial will take considerable time to conclude. A prayer has therefore, been made for extending the concession of bail to the petitioners, as their further incarceration would serve no useful purpose.

3. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite, by submitting that it was not a case of false implication, as recovery of 800 tablets of Alprazolam and 1800 tablets of Tramadol was effected from the bags which were being carried by both the petitioners. He submits that no doubt the recovery was not effected in the presence of a gazetted officer as per the mandate of Section 50 of the Act, however as soon as the secret information was received, a ruqa was sent to the Police Station, pursuant to which the FIR in question was registered. Learned State counsel has also not been able to dispute that both the petitioners have clean antecedents and are not involved in any other criminal case much less under the NDPS Act. It has also not been disputed that after charges

were framed on 12.07.2021 i.e. almost 2 years back, only 6 prosecution witnesses out of the 19 cited stand examined. Learned State counsel has also filed status report qua both the petitioners by way of affidavit of Fateh Singh Brar PPS, DSP Sub Division Malout today in the Court, which is taken on record subject to all just exceptions.

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

5. The petitioners have now been in custody since 13.11.2020 and there is no likelihood of the trial concluding in the near future as 13 prosecution witnesses still remain to be examined.

6. Hon'ble the 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 thus deems it fit to extend the concession of bail to the petitioners. Both the petitions, as such, are allowed and the petitioners are admitted to bail to the satisfaction of the trial Court/Duty Magistrate.

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.

8. Needless to add here, in case the petitioners misuse the concession of bail, the State would be at liberty to approach this Court for cancellation of bail in the instant case.

(MANJARI NEHRU KAUL)
JUDGE

September 11, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No