

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

226

CRM-M-48851-2023

Date of decision: 03.10.2023

Shamsher Singh @ Nikka

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kulbir Singh Sekhon, Advocate
for the petitioner.

Mr. Rahul Mohan, Sr. DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.137 dated 11.06.2020 under Sections 188 of the IPC and Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Kalan Wali, District Sirsa.

2. Learned counsel for the petitioner inter alia contends that the petitioner was allegedly apprehended with 990 tablets of Tramadol by the police on 11.06.2020. It has been submitted that a false recovery has been planted upon the petitioner. Learned counsel further submits that even though the challan was presented way back on 23.11.2020, the trial had failed to make much progress as only 08 prosecution witnesses out of the 16 cited had been examined till date. Hence, there was no likelihood of the trial concluding in the near future. It has also been submitted that false implication of the petitioner in the case in hand finds due credence from the fact that he has clean antecedents as

he is not involved in any other case under the NDPS Act.

3. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Naresh, has submitted that the recovery effected from the petitioner has been classified as commercial. He has, however, not been able to dispute that after the challan was presented on 23.11.2020, only 08 prosecution witnesses had been examined so far. It has also not been disputed by the learned State counsel, on instructions, that the petitioner is not involved in any other case under the NDPS Act.

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

5. The petitioner has been in custody since 11.06.2020. The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. The trial is unlikely to conclude 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. 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.

03.10.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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