

CRM-M-52494-2022 (O&M) AND
CRM-M-18177-2023 (O&M)

224 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: November 15, 2023

1. CRM-M-52494-2022 (O&M)

Gulshan Kumar

....Petitioner

versus

State of Punjab

....Respondent

2. CRM-M-18177-2023 (O&M)

Mann Singh @ Man Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present:- Mr. Ruhani Chadha, Advocate for petitioner
in CRM-M-52494-2022.

Mr. Prince Sharma, Advocate for petitioner
in CRM-M-18177-2023.

Ms. Kanica Sachdeva, AAG Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. Reply by way of short affidavit dated 15.11.2023 has been tendered, in course of hearing, by the learned State counsel, which is taken on record. Copy thereof has been supplied to counsel opposite. Custody certificates dated 13.11.2023 of petitioner-Maan Singh and dated 14.11.2023 of petitioner-Gulshan Kumar has also been tendered in course of hearing, by learned State counsel, which are also taken on record.

2. The petitioners are seeking the concession of bail under Section 439 of the Cr.P.C., in case FIR No.51 dated 25.05.2021, under Sections 21 and 22 of

the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), registered at Police Station Sadar Kurali, District SAS Nagar.

3. Learned counsel for the petitioners *inter alia* submit that petitioners have been in custody since 25.05.2021 in a case of false implication. It has also been submitted that though the challan was presented on 01.11.2021 and charges framed soon thereafter, on 22.12.2021, however only 02 prosecution witnesses out of 13 had been examined so far and hence, there was no likelihood of the trial concluding in the near future. It has also been submitted that trial has not been able to make any progress for reasons not attributable to the petitioners, but to the prosecution as its witnesses had not been putting in appearance during trial. It has also been submitted that petitioner, namely, Maan Singh has clean antecedents as he is not involved in any other criminal case.

4. *Per contra*, learned State counsel, on instructions from ASI Tilak Raj while opposing the prayer of the petitioners, has submitted that recovery of 01 kg. 300 grams of Heroin along with drug money of Rs.5 lacs was effected from the petitioners, on the basis of a secret information. It has however not been disputed that the trial has come to a virtually standstill after the charges were framed and only 02 prosecution witnesses have been examined till date. Learned State counsel has however not disputed that petitioner, namely, Maan Singh is not involved in any other criminal case much less a case under NDPS Act. He submits that petitioner, namely, Gulshan Kumar is but involved in another case under the NDPS Act and hence, he does not deserve the concession of bail as there is every likelihood that he could misuse the concession of bail and be involved in a case of similar nature.

5. Learned counsel for the petitioner, in rebuttal, has placed on record a photocopy of the judgment dated 09.02.2017 passed by learned Judge Special

Court, Jalandhar in the aforementioned NDPS case, which was registered against petitioner, Gulshan Kumar and submitted that in the said case, petitioner had since been acquitted by the aforesaid Court.

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

7. The petitioners have been in custody since 25.05.2021. Petitioner, Maan Singh, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act, and Petitioner, Gulshan Kumar, has already been acquitted in the other NDPS case, which was registered against him. Furthermore, the trial is unlikely to conclude in the near future.

8. 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."

9. In the facts and circumstances as enumerated hereinabove, this Court thus, deems it appropriate to allow the instant petitions by dispensing with the conditions of Section 37 of the NDPS Act.

10. Accordingly, the instant petitions are allowed. The petitioners be admitted to bail on their furnishing bail/surety bonds 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.

(MANJARI NEHRU KAUL)
JUDGE

Yes/No