

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

228

2023:PHHC:161492

CRM-M-55785-2023

Date of decision: December 15th, 2023

Subhe Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Saurav Kanojia, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandari, Assistant Advocate General,
Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.287 dated 21.11.2022 under Sections 20(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.6, District Ludhiana.

2. Learned counsel for the petitioner, *inter alia*, contends that a false recovery of 30 kilograms of *ganja* had been planted upon the petitioner. It has been submitted that the mandatory provisions of the NDPS Act were not complied with, even though it was a case of secret information, which fortified the petitioner's false implication in the case in hand. It has further been submitted that after the challan was presented on 24.02.2023 and charges framed on 17.05.2023, none of the 19 prosecution witnesses had been examined. Learned counsel has asserted that the conclusion of the trial was being delayed on account of the non-appearance of the prosecution witnesses, who in the case in hand, were all official witnesses. It has also been submitted that on a couple of occasions, non-bailable warrants had been issued to secure the

presence of the prosecution witnesses but in vain. Learned counsel submits that in the circumstances, more so since the petitioner is not involved in any other case under the NDPS Act, his further incarceration would not serve any purpose as there was no likelihood of the trial concluding in the near future.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Paramjit Singh, has not been able to controvert that after the charges were framed on 17.05.2023, none of the 19 prosecution witnesses had been examined till date. It has also not been disputed by learned State counsel that all the prosecution witnesses in the case in hand are official witnesses.

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

5. The petitioner has been in custody since 21.11.2022. 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. 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.

December 15th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No