

230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55925-2023

Date of Decision : 19.12.2023

Gurjinder Singh @ Nikka

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.232 dated 05.09.2022 under Section 22 of NDPS Act, 1985 (offence under Section 411 IPC, 1860 added later on) registered at Police Station Sultanpur Lodhi, District Kapurthala.

Learned counsel, *inter alia*, contends that the petitioner's innocence in the case in hand is evident from the fact that when he was asked to stop by the police party, it was the co-accused, who was a pillion rider, fled away and threw a bag containing 1100 tablets of Alprazolam; on being arrested by the police, no recovery of any contraband much less Alprazolam was effected from the conscious possession of the petitioner or even thereafter, pursuant to any disclosure statement suffered by him. Learned counsel submits that the investigation in the case in hand is complete and even charges stand framed, however, none of the witnesses cited by the prosecution have been examined till

date, hence, there is no likelihood of the trial concluding in the near future.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed that as per the allegations leveled, it was the co-accused who on seeing the police party tried to flee away from the spot and had thrown the bag containing the recovered contraband. However, it has been submitted that since the petitioner was riding the motorcycle alongwith co-accused, an adverse inference would have to be drawn against him.

On a pointed query put to the learned State counsel as to whether the petitioner was involved in any other criminal case, he, on instructions from ASI Sukhdev Singh, has replied in the negative. On further query put to the learned State counsel as to whether any recovery of contraband was effected from the petitioner on being arrested, he on further instructions, has replied in the negative.

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

The petitioner has been in custody for 1 year and 3 months having been arrested on 05.09.2022 and none of the 12 witnesses cited by the prosecution had been examined. As per instructions received by the learned State counsel, next date before the trial Court is 02.02.2024, hence, there is no possibility of the trial concluding in the near future.

In the facts and circumstances as enumerated hereinabove, 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.

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 bail granted to him.

December 19, 2023

Ps

**(MANJARI NEHRU KAUL)
JUDGE**

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