

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M No.60405 of 2022 (O&M)  
Date of decision: 29<sup>th</sup> November, 2023

Kulwant Singh @ Kanti

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Ashok Giri, Advocate for the petitioner.

Mr. Mohit Kapoor, Addl. Advocate General, Punjab  
for the respondent/State.

**MANJARI NEHRU KAUL, J. (ORAL)**

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.43 dated 01.07.2022 under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act') registered at Police Station Sadar Kurali, District SAS Nagar (Mohali).

2. Learned counsel for the petitioner inter alia submits that on the face of it, a false and fabricated case has been planted upon the petitioner, which is evident from the fact that there was total non-compliance of the mandatory provisions of the Act inasmuch as firstly, investigation was carried out by the Investigating Officer himself and secondly, no offer was given to the petitioner for getting his search effected from a Gazetted Officer. He submits that on this ground alone, investigation stands vitiated and the petitioner deserves to be extended

the concession of bail. Learned counsel further submits that after the petitioner was allegedly apprehended on 01.07.2022 for having thrown a bag containing 1130 tablets of Tramadol on the road, challan was presented on 22.12.2022 and charges framed on 19.01.2023, however, only 2 witnesses out of the 11 cited by the prosecution have been examined so far and hence, there was no likelihood of the trial concluding in the near future. A prayer has, therefore, been made for extending the concession of bail to the petitioner, as his further incarceration would serve no useful purpose.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Tilak Raj, has submitted that the petitioner, on seeing the police party, threw the bag containing contraband on the road and hence, on suspicion he was nabbed by the police party and thereafter, when a search was carried out, alleged recovery was effected from the bag. Learned State counsel has, however, not been able to dispute that no offer, as mandated under Section 50 of the Act, was given to the petitioner for getting himself searched by a Gazetted Officer and still further, investigation was carried out by the Investigating Officer himself. Learned State counsel has also brought to the notice of this Court that the petitioner is involved in two other cases under the NDPS Act, however concededly, recovery effected in those two cases was of non-commercial quantity.

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

5. The petitioner has now been in custody since 01.07.2022 and till date, only 2 witnesses out of the 11 cited by the prosecution stand examined. There is, thus, no likelihood of the trial concluding in the near future. In the facts and circumstances, as enumerated hereinabove, this Court thus deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is 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.

6. Needless to add here, in case the petitioner misuses 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

November 29, 2023  
*rps*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |