

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

222

2023:PHHC:138897

CRM-M-410-2023

Date of decision: October 31st, 2023

Bharat Bhushan alias Rulda

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.203 dated 28.07.2021 registered under Section 22 of NDPS Act, 1985 at Police Station Anaj Mandi, Patiala.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case in hand for having been found in possession of some intoxicant material in the bags. He submits that the petitioner has clean antecedents, which further lends credence to his false implication in the case in hand. It has also been submitted that though the petitioner was arrested on 28.07.2021 and challan presented on 26.10.2021, however, till date only one out of the nine prosecution witnesses had been examined. It has been submitted that the petitioner cannot be made to languish in custody for reasons not attributable to him but to the prosecution and prosecution alone as it is a matter of record that all the prosecution witnesses in the case in hand are none other than police officials.

3. Learned State counsel, on instructions from ASI Baljinder Singh, while opposing the prayer and submissions made by the counsel opposite, has not disputed that only one prosecution witness has been examined till date, however, the recovery effected from the petitioner and the co-accused has been classified as commercial under the NDPS Act. He further submits that the next date before the trial Court is 29.11.2023 when there is a likelihood of the other prosecution witnesses being examined. He has, however, not controverted that the delay in the trial has not been on account of reasons attributable to the petitioner but only on account of the fact that the prosecution witnesses had not been stepping into the witness box to get their evidence recorded.

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

5. The petitioner has been in custody since 28.04.2021. 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.

October 31st, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No