



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

208

CRM-M-2203-2024 (O&M)
Date of decision: May 17th, 2024

Rajwinder Singh @ Kala

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Jashandeep Singh Sandu, Advocate
for the applicant-petitioner.

Mr. Navdeep Singh, Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)**CRM-20183-2024**

Prayer in this application is for placing on record the copies
of interim orders passed by learned Judge, Special Court, Faridkot, as
Annexure P-3.

Application is allowed subject to just exceptions.

Annexure P-3 is taken on record.

CRM-M-2203-2024

Petitioner is seeking the concession of bail under Section
439 of the Code of Criminal Procedure, 1973 in case FIR No.64 dated
19.08.2022 under Section 15 (C) of the NDPS Act (Section 29 of the
NDPS Act added later on) registered at Police Station Bajakhana,
District Faridkot.

2. Learned counsel for the petitioner submits that after he was
arrested on 19.08.2022 for allegedly transporting 400 kilograms of

poppy husk, challan was presented on 05.12.2022 followed by framing of charges on 17.01.2023, however, it is a matter of record that ever since then, the prosecution had been taking adjournments and the trial Court had, had to adjourn the case on account of the repeated non-appearance of the prosecution witnesses. Learned counsel, in support, by way of CRM-20183-2024, has placed on record all the zimni orders with effect from 05.12.2022 i.e. when the challan was presented. Learned counsel has submitted that as many as 19 witnesses have been cited by the prosecution and three had been given up, however, the remaining 16 had not stepped into the witness box on a single date to get their evidence recorded. Hence, the petitioner could not be made to languish in custody for reasons attributable only to the prosecution alone, since all the prosecution witnesses cited in the present case were officials.

3. On a pointed query, learned counsel has informed the Court that the petitioner is not involved in any other case under the NDPS Act, though involved in one case under the Arms Act. In support of his submissions, he has relied upon judgment passed in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023***, wherein Hon'ble the Supreme Court in almost identical circumstances, had extended the concession of bail to an accused under the NDPS Act, even though the recovery affected had been classified as commercial.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not been able to controvert the submissions made by the counsel opposite qua the repeated irregular appearances of the prosecution witnesses, though

learned State counsel has submitted that on the previous date of hearing i.e. 15.05.2024, three prosecution witnesses had been summoned.

5. Learned counsel for the petitioner has, however, informed the Court that even on 15.05.2024, the prosecution witnesses failed to appear before the trial Court to get their evidence recorded.

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

7. No doubt, it is a case of chance recovery, wherein 400 kilograms of poppy husk was allegedly recovered from the petitioner while he was driving a truck, however, the liberty of an accused cannot be compromised on account of the lackadaisical attitude of the prosecution witnesses, who for reasons best known to them have not been appearing to get their evidence recorded.

8. This Court has repeatedly observed that prosecution witnesses have constantly failed to appear before the trial Court to provide their testimony, particularly in cases under the NDPS Act. On a previous occasion, due to persistent irregular appearances of the prosecution witnesses in cases registered under the NDPS Act, the Director General of Police, Punjab, had been directed to appear before this Court. On his appearance, the DGP, Punjab, gave a categorical undertaking that it would be ensured that prosecution witnesses in cases registered under the NDPS Act attend Court proceedings regularly and get their evidence recorded promptly. Despite this assurance, the problem persists, and obviously it has not produced the desired results. It is imperative that the State of Punjab addresses the recurring issue of prosecution witnesses' irregular appearances in cases under the NDPS Act and implement effective remedial measures, rather than

repeatedly apologizing to this Court. It is made clear that this Court would no longer accept any apologies and assurances by the State of Punjab of future compliance. Concrete steps must be taken to ensure accountability including taking disciplinary action against erring officials, if any required. The State of Punjab does not need a reminder of the widespread drug menace prevalent in this part of the country.

9. In the present case, as not disputed by the learned State counsel, the petitioner has been in custody since 19.08.2022. The trial is unlikely to conclude in the near future in the aforementioned facts and circumstances.

10. Hon'ble the 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.”

11. 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.

12. 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.

13. 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.

May 17th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No