

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

CRM-M-1365-2024

Date of decision: 07.02.2024

Mohit

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surinder Gaur, Advocate
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.73 dated 14.03.2021 under Sections 20(B)(ii) C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Asauda, District Jhajjar.

2. In compliance of order dated 18.01.2024, learned counsel for the petitioner has filed copies of zimni orders of the Trial Court, which are taken on record subject to all just exceptions. Learned counsel has drawn the attention of this Court to the zimni orders and submitted that a perusal of the same leaves no manner of doubt that after the charges were framed on 03.12.2021, the trial had not been able to make any headway only on account of the non-appearance of the prosecution witnesses. Learned counsel has reiterated that the petitioner cannot be made to languish in custody on account of the non-appearance of the prosecution witnesses and hence, on this ground

alone he deserved to be extended the concession of bail. In support of his submissions, learned counsel has placed reliance upon ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022)*** decided on 25.01.2023.

3. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has submitted that the petitioner was nabbed along with 123.5 kgs. of ganja which has been classified as commercial under the NDPS Act. She submits that in view of the huge recovery effected, the petitioner does not deserve to be extended the concession of bail. On a pointed query put to the learned State counsel, she has not been able to controvert that all the prosecution witnesses in the case in hand are official witnesses and they have not been appearing before the Trial Court as a result of which the trial has indeed been unnecessarily delayed. On a further query put to the learned State counsel, she on instructions, has also not disputed that the petitioner has clean antecedents and is not involved in any other criminal case much less under the NDPS Act.

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

5. The petitioner has been in custody since 14.03.2021. The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. 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. The petitioner be admitted to bail on his furnishing bail/surety bonds 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 add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

07.02.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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