

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

249

2024:PHHC:022048

CRM-M-1629-2024

Date of decision: February 15, 2024

OM PRAKASH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. H.S. Kehal, Advocate
for the petitioner.

Mr. Navdeep Singh, Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.287 dated 21.11.2022 (Annexure P-1) under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.6, Ludhiana.

2. Learned counsel for the petitioner *inter alia* contends that a false and fabricated case has been planted upon the petitioner for allegedly being found in possession of 30 kilograms of *ganja*. It has been submitted that the mandatory provisions of the NDPS Act were not complied with, even though it was a case of secret information, which fortified the petitioner's false implication in the case in hand. Learned counsel has submitted that the petitioner has now been in custody since 22.11.2022 and after the challan was presented on 24.02.2023 and charges framed on 17.05.2023, none of the 19 prosecution witnesses had been examined till date. Learned counsel has also submitted that the trial was being delayed only on account of the non-

appearance of the prosecution witnesses, who in the case in hand, were all official witnesses. It has been submitted that on numerous dates, even non-bailable warrants had been issued to secure the presence of the prosecution witnesses but in vain.

3. Learned counsel has further submitted that co-accused Subhe Kumar has already been extended the concession of regular bail by this Court vide order dated 15.12.2023 (Annexure P-3). Learned counsel submits that in the circumstances, further incarceration of the petitioner would serve no purpose as there was no likelihood of the trial concluding in the near future. A prayer has, therefore, been made to extend the concession of bail to the petitioner.

4. *Per contra*, while opposing the prayer and submissions made by the counsel opposite, learned State counsel, on instructions, has not been able to dispute that after the charges were framed on 17.05.2023, none of the 19 prosecution witnesses, who in the case in hand were all official witnesses, had been examined till date. However, on a pointed query put to the learned State counsel as to whether the petitioner has any criminal antecedents, he has submitted that the petitioner is involved in one other case under the Indian Penal Code but he is on bail in the said case. Learned State counsel has also filed the custody certificate of the petitioner in the Court today, which is taken on record subject to just exceptions.

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

6. The petitioner has been in custody since 21.11.2022. The petitioner cannot be made to languish in custody for an indefinite period; there is no

likelihood of the trial concluding anytime in the near future as the prosecution evidence has not yet commenced.

7. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2021]*** 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.”

8. 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.

9. Accordingly, 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.

10. Needless to say, in case the petitioner is found misusing the concession of bail granted to him, the State would be at liberty to seek cancellation of the same to him.

February 15, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No