

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6251-2024
Decided On: 05.03.2024

TARSEM SINGHPETITIONER(s)

Versus

STATE OF PUNJABRESPONDENT(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

MANJARI NEHRU KAUL, J.(Oral)

1. The instant petition has been filed under Section 439 Cr.P.C., for grant of regular bail to the petitioner in case FIR No.35 dated 28.02.2022 under Sections 15(c)/25/27/29 of NDPS Act, 1985 registered at Police Station Talwandi Sabo, District Bathinda.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been in custody since 28.02.2022, in a case of false implication. Learned counsel for the petitioner submits that he was just a driver of the truck from which recovery of 697 Kgs. of poppy husk was allegedly effected; the alleged recovery was supposed to be delivered to co-accused Raja, who has since been extended the concession of bail by this Court vide order dated 08.01.2024. It has further been submitted that even though the challan was presented way back on 22.08.2022 followed by framing of charges on 05.09.2022, till date only 03 prosecution witnesses had been examined out of the total 20 cited and hence, the petitioner could not be made to languish in custody, more so, when it was a matter of record

that the delay in the conclusion of the trial had been on account of non-appearance of the prosecution witnesses, who in the instant case were all officials.

3. On a pointed query put to the learned counsel for the petitioner, as to whether he is involved in any other criminal case, he has replied in the negative but has fairly conceded that though one other case under the NDPS Act had been registered against him, however, it was a matter of record that he had since earned an acquittal in the said case in May, 2023.

4. Learned counsel for the petitioner has also placed reliance upon ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]***, wherein Hon'ble the Supreme Court in almost identical circumstances had granted the concession of bail to the accused on account of the inordinate delay in the conclusion of the trial.

3. *Per contra*, learned State counsel, while opposing the prayer and submissions made by the learned counsel for the petitioner, on instructions from ASI Rajinder Kumar, has not disputed that as on date, only 03 prosecution witnesses have been examined. However he, on instructions, has submitted that 04 prosecution witnesses have already been given up and 13 prosecution witnesses remain to be examined. Learned State counsel has also not disputed that the petitioner is not involved in any other criminal case, much less a case of similar nature and he has since been acquitted in the only other case, which was previously registered against him under the NDPS Act. Learned State counsel, on instructions, has not been able to controvert that the conclusion of the trial has been delayed on account of the non appearance of the prosecution witnesses.

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

5. The petitioner has been in custody since 28.02.2022; after the challan was presented and charged framed, only three prosecution witnesses have been examined till date. Hence, there is no likelihood of the trial concluding in the near future.

6. The 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 fit to extend the concession of bail to the petitioner. Accordingly, the instant petition is allowed; the petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned.

8. 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 here, in case, the petitioners are found misusing the concession of bail, the State would be at liberty to approach this Court to seek cancellation of bail to them.

(MANJARI NEHRU KAUL)
JUDGE

05.03.2024

Aman Dua

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No