

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8921-2024
Decided On: 12.03.2024

RAHUL MAHAJAN

.....PETITIONER(s)

Versus

STATE OF PUNJAB

.....RESPONDENT(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Saurav Kanojia, Advocate
for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

MANJARI NEHRU KAUL, J.(Oral)

1. The instant second petition has been filed under Section 439 Cr.P.C., for grant of regular bail to the petitioner in case FIR No.287 dated 21.11.2022 under Sections 20(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.6, District Ludhiana.
2. Learned counsel for the petitioner, inter alia, contends that a false recovery of 30 kilograms of ganja had been planted upon the petitioner. 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. It has further been submitted that 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. Learned counsel has asserted that the conclusion of the trial was being delayed on account of the non-appearance of the

prosecution witnesses, who in the case in hand, were all official witnesses. It has also been submitted that on a couple of occasions, non-bailable warrants had been issued to secure the presence of the prosecution witnesses but in vain. Learned counsel submits that in the circumstances, more so since the petitioner is not involved in any other case under the NDPS Act, his further incarceration would not serve any purpose as there was no likelihood of the trial concluding in the near future. Learned counsel for the petitioner further submits that petitioner is at parity with the other co-accused persons namely Subhe Kumar and Suraj Gupta, who have already been granted the bail by this Court vide orders dated 15.12.2023 and 12.02.2024 (Annexure P-4 and P-5) respectively.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has not been able to controvert that after the charges were framed on 17.05.2023, none of the 19 prosecution witnesses had been examined till date. It has not been disputed by learned State counsel that all the prosecution witnesses in the case in hand are official witnesses. It has also not been disputed the fact that the co-accused persons namely Subhe Kumar and Suraj Gupta have already been granted bail by this Court vide orders dated 15.12.2023 and 12.02.2024 respectively .

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

5. The petitioner has been in custody since 21.11.2022. The trial is unlikely to conclude in the near future as none of the 19 prosecution witnesses cited have been examined till date.

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.

(MANJARI NEHRU KAUL)
JUDGE

12.03.2024

Aman Dua

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No