

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

236

2024:PHHC:035897

CRM-M-9282-2024

Date of decision: March 13th, 2024

Gurmukh Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is a second petition filed by the petitioner seeking the concession of regular bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.154 dated 24.12.2021 under Section 21 of the NDPS Act, 1985, registered at Police Station City Kurali, District S.A.S. Nagar.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been in custody since 24.12.2021 when he along with co-accused Mandeep Singh alias Manna were allegedly apprehended by the police along with 300 grams of heroin, which was lying inside the dashboard of the car in which both of them were travelling. Learned counsel submits that it is a matter of record that after the challan was presented almost two years back on 18.06.2022, it was followed by the framing of charges on 22.07.2022, however, the trial had come to a virtual standstill as only three witnesses out of the 17 cited by the prosecution have been examined till date. Learned counsel submits that in the circumstances, the petitioner cannot be made to languish in custody

for reasons not attributable to him but to the prosecution as it was their witnesses, who had been continuously absenting themselves before the trial Court. Learned counsel has submitted that no doubt, the petitioner is involved in another case under the NDPS Act, however, as per the allegations levelled, he was apprehended with only 3 grams of heroin along with 10 grams of opium, which has been classified as small quantity under the NDPS Act. Learned counsel has, therefore, prayed for enlarging the petitioner on bail as there is no possibility of the trial concluding anytime in the near future.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by counsel opposite, on instructions from ASI Bhupinder Singh, has not disputed the status of the trial; it has also not been disputed that co-accused Mandeep Singh, who was the owner-cum-driver of the car from which the alleged recovery was effected, had also been extended the concession of bail by this Court vide order dated 29.11.2023 only on account of the conclusion of the trial having been delayed due to the non-appearance of the prosecution witnesses. Learned State counsel has also not disputed that in the other case registered under the NDPS Act against the petitioner, a recovery of 3 grams of heroin and 10 grams of opium was effected from him.

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

5. The petitioner has been in custody since 24.12.2021. 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. 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.

March 13th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No