

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10811-2024
Decided On: 06.03.2024

MAHENDER KUMARPETITIONER(s)

Versus

STATE OF HARYANARESPONDENT(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Rahul Mohan Singh, Sr. DAG, Haryana.

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.70 dated 16.05.2022 under Sections 15(C)/27A of NDPS Act registered at Police Station Baragudha, District Sirsa.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been in custody since 16.05.2022; despite challan having been presented on 09.11.2022 and charges having been framed on 02.12.2022, only one prosecution witness out of the 25 cited has been examined till date and hence, the possibility of the trial concluding in the near future looks bleak. Learned counsel for the petitioner has also drawn the attention of this Court to the zimni orders of the trial Court, which have been annexed as Annexure P-6, and submitted that a perusal of the same reveals that after the charges were framed, adjournments had been sought by the Public Prosecutor on account of the non-appearance of the prosecution witnesses. It has thus been submitted that it is, evident that

the conclusion of the trial has been delayed for reasons not attributable to the petitioner but to the prosecution alone.

On merits also, learned counsel for the petitioner submits that a false case has been planted upon the petitioner for having been found in possession of 60.1 Kgs., of poppy husk while he was driving a car. It has also been submitted that the recovery allegedly effected is even otherwise just marginally higher than the minimum classified as commercial under the Act.

3. *Per contra*, learned State counsel, while opposing the prayer and submissions made by the learned counsel for the petitioner, on instructions from SI Madan Lal, has not disputed the stage of trial, however, he submits that one prosecution witness has been given up and hence, now 23 prosecution witnesses remain to be examined. Learned State counsel has further informed the Court that the petitioner was apprehended while he was driving a car along with co-accused, who is none other than his son. It has still further submitted that no doubt, the alleged recovery is just marginally higher than the minimum prescribed as commercial under the Act, however, the petitioner was previously convicted in one case under the NDPS Act, in the year 2013, though in the said case, the recovery effected from him was of non-commercial quantity. Learned State counsel, on instructions, has however not disputed that the trial Court had been adjourning the case on various dates on account of non-appearance of the prosecution witnesses, who admittedly are all officials.

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

5. The petitioner has been in custody since 16.05.2022 and the possibility of the trial concluding does not seem possible in the near future, more so, when admittedly the prosecution witnesses have been absenting themselves before the trial Court. Learned State counsel has conceded that there is no other case under the NDPS Act pending against the petitioner as on date.

6. 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.

7. 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.

06.03.2024

Aman Dua

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No