

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

218

CRM-M-14527-2024

Date of decision: 02.04.2024

Balram Sahni

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Rajiv Kumar Trikha, Advocate for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

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**MANJARI NEHRU KAUL, J. (ORAL)**

1. The petitioner in the instant (second) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.92 dated 18.06.2010 under Sections 20, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Ladhawal, Ludhiana.

2. Learned counsel for the petitioner inter alia contends that though the petitioner was arrested on 26.06.2022, however, till date the trial had not concluded and furthermore there was no likelihood of the trial concluding any time in the near future as on each and every date after the charges were framed on 27.09.2022, the prosecution witnesses who in the instant case are all officials, had not been appearing to get their evidence recorded. Learned counsel submits that in the circumstances, the petitioner cannot be made to languish in custody for no fault of his but for reasons attributable to the prosecution and prosecution alone. Learned counsel in support has drawn the attention of this Court to the zimni orders of the learned Trial Court annexed as

Annexure P-7 wherein it finds reflected that except for one date i.e. 08.05.2023, the learned Trial Court had had to adjourn the case on account of the non-appearance of the prosecution witnesses. It has also been submitted that the alleged recovery of 10 kgs of ganja was effected from co-accused Vikau Sahni who was pillion riding behind the petitioner, when he was apprehended on the basis of suspicion by the police party. Learned counsel submits that the petitioner has clean antecedents and is not involved in any other criminal case much less a case of similar nature. Learned counsel has further asserted that no doubt after the registration of the FIR in question, he did abscond and was declared a proclaimed offender, however, it was also a matter of record that during the period when he allegedly absconded, he was not involved in any other criminal case.

3. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Dalbir Singh, has submitted that the petitioner remained absconding for as long as 11 years and it was only on 26.06.2022 that he could be arrested. It has also been submitted that the co-accused who was pillion riding behind the petitioner is still at large. Learned State counsel, however, has not been able to controvert the contents of the zimni orders which have been annexed with the petition. It has also not been disputed on instructions that the petitioner is not involved in any other criminal case much less under the NDPS Act.

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

5. The petitioner has now been in custody since 26.06.2022.

The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. 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.

8. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds 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 add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

**02.04.2024**

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**(MANJARI NEHRU KAUL)  
JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No