

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

237

2024:PHHC:056734

CRM-M-15245-2024

Date of decision: April 25, 2024

SACHIN KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Amit Rana, Senior Deputy Advocate General, Punjab
with ASI Tarsem Singh.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.87 dated 04.06.2020 (Annexure P-1) under Sections 21, 22 and 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Phase 1, District SAS Nagar, Mohali.

2. Learned counsel for the petitioner *inter alia* contends that in a case of false implication, the petitioner was arrested on 04.06.2020; as per the allegations levelled, the petitioner was found carrying 500 grams of heroin. Learned counsel submits that the petitioner has no criminal antecedents, which clearly indicates that he has been falsely implicated in the present case. Learned counsel has further submitted that though challan was presented more than 3½ years back on 04.11.2020 and charges were framed on 24.11.2021, however, till date, the trial had not concluded as 9 prosecution witnesses still remained to be examined.

3. Learned counsel has still further submitted that the falsity of the prosecution version is evident from the fact that the alleged recovery was effected while the petitioner was walking on a road and that too when the COVID pandemic was at its peak i.e. in June 2020, hence it could not have been possible for the petitioner to be blatantly violating the lockdown orders and indulging in drug trafficking. Learned counsel has submitted that it is a matter of record that except for on 3 or 4 dates, on all other 35 dates of hearing, it is the prosecution witnesses, who had absented themselves before the learned trial Court and not come forward to get their evidence recorded. Hence, the petitioner could not be made to languish in custody for reasons not attributable to him but to the prosecution alone.

4. Learned counsel for the petitioner has referred to ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]***, wherein, in almost identical circumstances, Hon'ble the Supreme Court had granted the concession of bail to the accused. It has also been submitted that identically placed co-accused Jasbir Kaur has since been extended the concession of bail by this Court vide order dated 13.03.2024 (Annexure P-15); it is also a matter of record that even though co-accused Jasbir Kaur had been granted bail only on account of the fact that prosecution witnesses had not been appearing to get their evidence recorded, even thereafter when the case was adjourned by the learned trial Court, the prosecution witnesses had again failed to appear to get their evidence recorded. In support, learned counsel has placed on record a copy of the order of the learned trial Court dated 05.04.2024.

5. *Per contra*, learned State counsel, while opposing the prayer made by the counsel opposite, has submitted that a huge recovery of 500 grams of heroin was effected from the petitioner. He has submitted that such a huge

recovery could not have been possibly planted upon the petitioner and hence, there is no question of his false implication in the instant case. However, learned State counsel, on instructions, has not disputed the submissions made by the counsel opposite *qua* the stage of the trial and in particular, that the prosecution witnesses have not been appearing to get their evidence recorded before the learned trial Court despite the fact that on some dates,ailable warrants were also issued to secure their presence. He has also filed the custody certificate of the petitioner in the Court today, which is taken on record.

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

7. 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.”

8. 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.

9. 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.

10. Needless to add here, in case the petitioner is found misusing the concession of bail, the State would be at liberty to approach this Court to seek cancellation of bail to him.

April 25, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No