



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

227

CRM-M-16634-2024

Date of decision: July 8th, 2024

Boota Singh @ Mintu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Prateek Pandit, 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.214 dated 13.09.2022 under Sections 18, 18 (b), 29 of the NDPS Act, 1985, registered at Police Station Shahkot, District Jalandhar (Rural).

2. Learned counsel for the petitioner has at the outset placed on record the zimni orders of the trial Court, wherein it stands reflected that after the charges were framed on 20.04.2023, the case was being repeatedly adjourned on account of the non-appearance of the prosecution witnesses, who in the instant case are all officials. Learned counsel has drawn the attention of this Court to the orders dated 12.09.2023 onwards, wherein it stand reflected that despiteailable warrants issued, none of the prosecution witnesses had appeared to get their evidence recorded. Learned counsel has submitted that in the circumstances, the petitioner could not be made to languish in custody for

reasons not attributable to him but to the prosecution and prosecution alone.

3. On a pointed query, learned counsel has submitted that the petitioner is not involved in any other criminal case much less under the NDPS Act.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by counsel opposite has not been able to dispute the contents of the zimni orders, which have been placed on record by the learned counsel for the petitioner today. He, however, submits that the petitioner was apprehended at the spot by the police and a recovery of 3 kilograms opium affected from beneath the driver seat of his car. It has also not been disputed by the learned State counsel that the petitioner is not involved in any other criminal case.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The petitioner has been in custody since 15.09.2022. The trial is unlikely to conclude in the near future.

7. Hon'ble the 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 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.

July 8th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No