



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

CRM-M-18318-2024

Date of decision: July 11th, 2024

Lovepreet Singh @ Mundri

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

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

MANJARI NEHRU KAUL, J. (ORAL)

This is a third 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.64 dated 19.08.2022 under Sections 15-C and 29 of the NDPS Act registered at Police Station Bajakhana, District Faridkot.

2. Learned counsel for the petitioner submits that he was working as a conductor in a truck, which was allegedly intercepted while transporting 400 kilograms of poppy husk. Learned counsel has further submitted that even though challan was presented on 05.12.2022 and charges framed on 17.01.2023, however, till date, the trial had not concluded as repeated adjournments had been sought by the prosecution on account of non-appearance of the prosecution witnesses. It has been submitted that out of 19 witnesses cited by the prosecution, only two witnesses had been fully examined, whereas two others had been partially examined. Learned counsel has also brought to the notice of this Court

that the driver of the truck in which the contraband was allegedly being transported had been extended the concession of bail by this Court vide order dated 17.05.2024 in CRM-M-2203-2024 on account of the irregular appearances of the prosecution witnesses before the trial Court, which had led to the conclusion of the trial being delayed.

3. Learned counsel has submitted that the petitioner is not involved in any other case under the NDPS Act. In support of his submissions that the petitioner deserves to be extended the concession of bail on account of his long incarceration and for reasons attributable to the non-appearance of the prosecution witnesses to get their evidence recorded before the trial Court. Reliance has been placed upon judgment passed in *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023*, wherein in almost identical circumstances, Hon'ble the Supreme Court had extended the concession of bail to an accused under the NDPS Act, even though the recovery affected from the accused had been classified as commercial.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not been able to controvert the submissions made by the counsel opposite with respect to the stage of trial and regarding the irregular appearances of the prosecution witnesses, though it has been submitted, on instructions, that the examination-in-chief of two of the 19 witnesses stands recorded, whereas two witnesses have been fully examined and two witnesses given up.

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

6. No doubt, it is a case of chance recovery, wherein 400 kilograms of poppy husk was allegedly recovered from a truck in which the petitioner was working as a conductor, however, the liberty of an accused cannot be compromised on account of the lackadaisical attitude of the prosecution witnesses, who for reasons best known to them have not been regularly appearing to get their evidence recorded. Co-accused Rajwinder Singh alias Kala (driver of the truck in question) has already been extended the concession of bail by this Court precisely for the aforesaid reasons.

7. In the present case, as not disputed by the learned State counsel, the petitioner has been in custody since 19.08.2022. The trial is, therefore, unlikely to conclude in the near future in the aforementioned facts and circumstances.

8. 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.”

9. 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.

10. 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.

11. 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 11th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No