

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229

CRM-M-18312-2024

Date of decision: 22.04.2024

Prince Kumar alias Prince

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. G.S. Madaan, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (third) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.370 dated 23.12.2022 under Sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Rama Mandi, District Jalandhar.

2. On a pointed query put to the learned counsel for the petitioner as to what was the material change in circumstances after the withdrawal of the second petition as recently as on 13.02.2024, it has been submitted by the learned counsel that one prosecution witness PW3 Nirmal Singh, PPS, ACP Central, Jalandhar, had been examined.

3. Learned counsel for the petitioner has asserted that he has been falsely implicated in the present case, while he was driving his car and was accompanied by co-accused Tarun Kumar; when the police asked the petitioner to stop the car, allegedly a recovery of 400 grams of heroin was effected from a black polybag carried by co-accused

Tarun Kumar. Learned counsel has submitted that admittedly no recovery of any contraband much less heroin was effected from the petitioner. Learned counsel has further argued that not only does the challan stand presented but even charges have been framed, however, since only 03 prosecution witnesses out of the 15 have been examined till date, the conclusion of the trial in the near future is unlikely. Given the custody of the petitioner since 23.12.2022, he be released on bail as his further incarceration would serve no useful purpose.

4. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has drawn the attention of this Court to the allegations levelled in the FIR which has been annexed as Annexure P-1. He has submitted that a perusal of the FIR clearly reveals that the petitioner as well as co-accused Tarun Kumar were travelling together in the car. While the petitioner was driving the car, co-accused Tarun Kumar was sitting besides him on the front seat, holding a polythene bag containing the recovered contraband i.e. 400 grams of heroin. It has been further submitted by the learned State counsel that the recovered contraband was much more than the minimum classified as commercial under the NDPS Act. Therefore, the rigors of Section 37 of the NDPS Act would preclude the petitioner from being enlarged on bail. Furthermore, it has been argued that there has been no material change in circumstances after the withdrawal of the previous petition by the petitioner under Section 439 of the Cr.P.C. as recently as on 13.02.2024; learned State counsel has submitted that no doubt 03 prosecution witnesses have been examined till date, however, that

would not constitute any material change in circumstances moreso when they had supported the case of the prosecution in its entirety. It has been further submitted by the learned State counsel that the prosecution shall ensure that the remaining prosecution witnesses get their evidence recorded on each and every date of hearing before the learned Trial Court. A prayer has, therefore, been made for dismissal of the instant petition.

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

6. Indeed, as per the case of the prosecution, although the bag containing the recovered contraband was allegedly found in the possession of co-accused Tarun Kumar, however, it was the petitioner who was allegedly driving the vehicle in question on the fateful day and at the relevant time, attempted to reverse his vehicle upon sighting the police. Consequently, it was on suspicion the police immediately halted the car and after complying with all the mandatory provisions of the NDPS Act, effected recovery of the contraband. On the surface, the petitioner's action of reversing the car, while driving at the relevant time, prima facie suggests awareness on his part qua co-accused Tarun Kumar being in possession of the recovered contraband. In the facts and circumstances as enumerated hereinabove, this Court would not be inclined to extend the concession of bail to the petitioner.

7. Accordingly, the instant petition is hereby dismissed.

8. However, learned Trial Court is directed to expedite the trial and conclude it at the earliest in view of the long incarceration of the petitioner who has been in custody since 23.12.2022.

9. It is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.04.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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