



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

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CRM-M-22231-2024

Date of decision: August 20th, 2024

Sunil Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ankur Bansal, Advocate
for the petitioner.

Mr. Shiva Khurmi, Assistant 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.210 dated 24.08.2022 under Sections 22, 25 and 29 of the NDPS Act, 1985, registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Learned counsel for the petitioner, at the outset, has drawn the attention of this Court to the zimni orders annexed along with the petition as Annexure P-2 (colly.). It has been asserted by the learned counsel that a perusal of the zimni orders as also the other four orders of the trial Court, which have been produced in the Court today, reveal that even though charges were framed way back on 19.07.2023, the prosecution witnesses, who are all police officials, in the present case, have been repeatedly absenting themselves before the trial Court; despite issuance of bailable warrants to secure their presence, they had failed to appear to get their evidence recorded. Learned counsel has, therefore,

prayed that in the aforementioned facts and circumstances, the petitioner

cannot be made to languish in custody, more so when he has now been in custody for two years having been arrested on 24.08.2022. It has still further been submitted that the alleged recovery i.e. 4500 tablets of Tramadol was not affected from the conscious possession of the petitioner but was lying on the rear seat of the vehicle in which he along with other co-accused were travelling. It has also been submitted that the petitioner is not involved in any other case under the NDPS Act.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by counsel opposite has, on instructions, has not been able to dispute the submissions made by the counsel opposite qua the repeated absence of the prosecution witnesses before the trial Court. It has, however, been submitted by the learned State counsel that four witnesses out of the 14 cited by the prosecution have been examined till date. It has also been submitted by the learned State counsel that though the petitioner along with co-accused were nabbed on suspicion, however, the recovery affected is huge i.e. 1.192 kilograms of Tramadol, which is classified as commercial.

4. On a pointed query put to the learned State counsel, he, on instructions from S.I. Rajinder Singh, has not disputed that the petitioner is not booked under any other case under the NDPS Act except for the instant one.

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

6. The petitioner has been in custody for two years. A perusal of the zimni orders reveals that the trial has come to a virtual standstill on account of the repeated non-appearance of the prosecution witnesses

before the trial Court. In the facts and circumstances, there is no possibility of the trial concluding 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.

August 20th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No