



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

220

CRM-M-22834-2024

Date of decision: August 20th, 2024

Sagar Kaushik

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Shweta Bawa, Advocate
for the petitioner.

Ms. Trishanjali Sharma, Deputy Advocate General, Haryana.

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.517 dated 28.08.2022 under Sections 22 and 29 of the NDPS Act, 1985, registered at Police Station Mujessar, District Faridabad.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 28.08.2022 in a case of false implication. It has been submitted that the petitioner's false implication in the present case finds credence from the fact that he has no criminal antecedents much less any involvement in the case under the NDPS Act. It has been further submitted that despite the fact that challan was presented on 14.11.2022 and charges framed on 06.01.2023, till date only three witnesses have been examined out of the 17 cited by the prosecution; it is a matter of record that the trial Court had been adjourning the case time and again on account of the repeated non-appearance of prosecution witnesses, who in the present case, are all official. It has also been submitted by the learned

counsel that the prosecution witnesses had been, on a few dates, summoned by way of bailable warrants, however, yet again, they had failed to appear before the trial Court. Learned counsel has thus, submitted that in the aforementioned facts and circumstances, the liberty of the petitioner and his right to speedy trial cannot be compromised.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by counsel opposite has, on instructions, submitted that a secret information was received qua the involvement of the petitioner in drug trafficking. Resultantly, the petitioner was nabbed along with 20 injections of Buprenorphine, which has been classified as commercial under the NDPS Act. Learned State counsel, on instructions, has not been able to dispute the stage of trial and the factum of the repeated non-appearance of prosecution witnesses before the trial Court to get their evidence recorded.

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

5. The petitioner has been in custody since 28.08.2022. The trial is unlikely to conclude in the near future.

6. 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.”

7. 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.
8. 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.
9. 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