



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

212

CRM-M-27669-2024

Date of decision: July 5th, 2024

Harpreet Singh @ Gulzari

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. P.P.S. Duggall, Advocate
for the petitioner.

Mr. Navdeep Singh, 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.212 dated 28.10.2022 under Sections 21, 25, 29 of the NDPS Act, registered at Police Station Sadar Jagraon, District Ludhiana (Rural).

2. Learned counsel for the petitioner submits that though the petitioner has been in custody since 28.10.2022 and challan was presented on 24.04.2023, followed by framing of charges on 24.05.2023, the trial had been unnecessarily delayed as only five witnesses out of the 16 cited by the prosecution have been examined till date. Learned counsel has argued that even otherwise, the alleged recovery affected from the petitioner was just marginally higher than the threshold provided under the NDPS Act with respect to heroin as the recovery affected from him was 255 grams. Learned counsel submits that as not disputed by the prosecution also, the alleged recovered contraband had been weighed

along with the plastic bag and hence, there was every likelihood that the heroin recovered was below 250 grams. Learned counsel has also submitted that the delay in the conclusion of the trial has been on account of the irregular appearance of the prosecution witnesses, for which the petitioner cannot be made to languish in custody more so as it is a matter of record that as on date, there is no case pending against the petitioner under the NDPS Act.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by counsel opposite, has submitted that the recovery affected from the petitioner, though marginally higher than the minimum classified as commercial under the Act, would still be termed as commercial quantity. He has, on further instructions, submitted that though the petitioner as on date is not involved in any other case under the NDPS Act, however, previously a case under the NDPS Act was indeed registered against him, however, he has since been acquitted in the same. Learned State counsel has not disputed the stage of trial and has submitted that 11 prosecution witnesses still remain to be examined and in all likelihood, some of the witnesses would be examined on the next date of hearing i.e. 05.08.2024.

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

5. The petitioner has been in custody since 28.10.2022. 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.

July 5th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No