



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CRM-M-28197-2024 (O&M)

Date of decision: 04.07.2024

Dharam Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harneet Singh Oberoi, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)**CRM-24994-2024**

At the outset, learned counsel for the petitioner prays for
withdrawal of the instant application.

Dismissed as withdrawn.

CRM-M-28197-2024

1. The petitioner in the instant (second) petition is seeking the
concession of bail under Section 439 of the Cr.P.C. in case FIR
No.0089 dated 01.09.2021 under Sections 22/25/29/27/61/85 of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the
NDPS Act') registered at Police Station Joga, District Mansa.

2. Status report by way of affidavit of Gurpreet Singh, PPS,
Deputy Superintendent of Police, Sub-Division Mansa, District Mansa,
has been filed in the Court today which is taken on record subject to all
just exceptions. A copy of the same has been supplied to the counsel



opposite.

3. Learned counsel for the petitioner is at the outset seeking parity with co-accused Sandeep Singh and Navdeep Singh from whom the alleged recovery of 4870 tablets of Tramadol was effected by the police on suspicion. Learned counsel has submitted that the petitioner was not apprehended at the spot and he came to be nominated as an accused subsequently on the basis of a disclosure statement allegedly suffered by both the abovesaid co-accused, who stated that the recovered contraband had been procured by them through the petitioner. Learned counsel submits that not only is the evidentiary value of such a disclosure statement weak in nature but the petitioner being innocent is also evident from the fact that he is not involved in any other criminal case much less under the NDPS Act. Learned counsel has further submitted that after he was arrested on 02.09.2021, the trial had been proceeding at a snail's pace on account of the repeated absence of the prosecution witnesses before the learned Trial Court and as a result of which till date only 15 prosecution witnesses out of the 31 cited, had been examined. Learned counsel has argued that in the circumstances, the petitioner cannot be made to languish in custody for reasons attributable to the prosecution witnesses, who in the instant case are all officials.

4. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions, has not disputed that the petitioner was not accompanying co-accused Sandeep Singh and Navdeep Singh when the alleged recovery was effected from



CRM-M-28197-2024 (O&M)

-3-

them. However, it has been submitted by the learned State counsel that as per the disclosure statement suffered by the co-accused, the petitioner was the supplier of the contraband which had been recovered from them; furthermore, a recovery of 21000 tablets of Tramadol was also effected from the petitioner on being arrested which pointed to his involvement in drug trafficking. On a further query, learned State counsel has not disputed the submissions made by the counsel opposite that both the co-accused had been extended the concession of bail by this Court on account of the repeated non-appearance of the prosecution witnesses on as many as 36 different dates, before the learned Trial Court. It has also not been disputed by the learned State counsel that the petitioner has no criminal antecedents.

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

6. The petitioner has now been in custody since 02.09.2021. Admittedly, he is not involved in any other case under the NDPS Act and 16 prosecution witnesses still remain to be examined, hence, possibility of the trial concluding in the near future looks remote. Hon'ble 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 as the conclusion of the trial has been delayed on account of the repeated non-appearance of the prosecution witnesses before the learned Trial Court who in the instant case are all officials.

8. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds 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 add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

04.07.2024

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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