

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

214

2024:PHHC:018616

CRM-M-31198-2023

Date of decision: February 9th, 2024

Bhupinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. J.S. Sandhu, Advocate
for the petitioner.

Mr. Arun Luthra, Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.41 dated 23.04.2022 under Section 22 of the NDPS Act, 1985, registered at Police Station Lakho Ke Behram, District Ferozepur.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been in custody since 23.04.2022 in a case of chance recovery; a false case of 228 tablets of Etizolam has been planted upon him. Learned counsel has further submitted that despite the challan having been presented on 20.10.2022 and charges having been framed 16.11.2022, none of the 11 prosecution witnesses had been examined till date. In support, he has placed on record true copy of zimni orders with effect from 20.10.2022 i.e. the date when the challan was presented before the trial Court. Learned counsel has submitted that a perusal of the zimni orders reveals that the trial Court had been adjourning the case only on account of non-appearance of the prosecution witnesses and on few occasions, on account of the jail

authorities not producing the petitioner before the trial Court. Learned counsel submits that in the circumstances, more so since he has no criminal antecedents, the petitioner could not be made to languish in custody for reasons attributable to the prosecution and prosecution alone as it amounted to the compromise of his personal liberty under Article 21 of the Constitution of India.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has submitted that the recovery effected from the petitioner was huge and had been classified as commercial under the NDPS Act, hence, he did not deserve to be extended the concession of bail. However, at the same time, on instructions, he has not been able to dispute that the delay in the conclusion of the trial has been on account of non-appearance of the prosecution witnesses ever since the charges were framed more than 1 year and 3 months back on 16.11.2022.

4. On a pointed query put to the learned State counsel, he on instructions, has not been able to dispute that the petitioner is not involved in any other criminal case much less a case under the NDPS Act.

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

6. The petitioner has been in custody since 23.04.2022; he is not stated to be involved in any other criminal case much less under the NDPS Act.

7. Though the alleged recovery effected from the petitioner has been classified as commercial under the NDPS Act, however, the 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.”

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.

February 9th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No