



CRM-M-31529-2024

[1]

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

[235]

CRM-M-31529-2024

Date of decision: 08.08.2024

Nayim

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Sharmila Sharma, Advocate for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. Present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.444 dated 29.12.2022 for offences punishable under Sections 20 (20(B)II-C & 29 added later on) of the NDPS Act, registered at Police Station Sadar Rohtak, District Rohtak.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 29.12.2022 in a case of false implication. The petitioner was allegedly apprehended with 1 kilogram and 400 grams of *charas* pursuant to an alleged secret information received. Learned counsel further submits that the petitioner has never been involved in any case under the NDPS Act, which lends credence to his false implication in the present case. It has also been brought to the notice of this Court that though the challan in the present case was presented on 07.07.2023, however, the charges were framed as recently as on 25.07.2024. Hence, the trial had been delayed for reasons

attributable not to the petitioner but to the prosecution and prosecution



alone. Learned counsel has also submitted that since as many as 14 prosecution witnesses have been cited and none of them have been examined till date, further incarceration of the petitioner would serve no useful purpose.

3. In support, learned counsel while placing reliance on ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]***, has submitted that in identical circumstances on account of delayed trial, Hon'ble the Supreme Court had done away with the bar under Section 37 of the NDPS Act, even though in the said case, the recovered contraband had been classified as commercial. A prayer has, therefore, been made to extend the concession of bail to the petitioner

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has not been able to dispute the stage of trial and also the factum of the petitioner not being involved in any other case under the NDPS Act. However, learned State counsel, on instructions, has asserted that there is one case pending against the petitioner for offence punishable under Section 328 of the IPC.

5. Learned State counsel has further submitted that a specific secret information had been received qua the involvement of the petitioner in drug trafficking and only pursuant thereto, the petitioner was apprehended after due compliance of the mandatory provisions of the NDPS Act.



6. Learned counsel has also argued that the alleged recovery is 1 kilogram and 400 grams and, hence, the bar under Section 37 of the NDPS Act would be attracted in the present case.

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

8. 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."

9. The investigation in the present case is complete, as challan stands presented and the charges were framed as recently as on 25.07.2024. There is no likelihood of the trial concluding in the near future, as out of 14 prosecution witnesses cited, none of them have been examined till date, hence, the petitioner cannot be made to languish in custody for an indefinite period, as it would amount to compromising with the liberty of the petitioner and his right to speedy trial.

10. In the facts and circumstances as enumerated hereinabove, this Court thus deems it fit to extend the concession of bail to the petitioner.

11. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on her furnishing bail/surety bonds to the



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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.

12. 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.

AUGUST 08, 2024
*Anjal**

(MANJARI NEHRU KAUL)
JUDGE

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