



CRM-M-32068-2024

-1-

**229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-32068-2024
Decided on : 12.07.2024

Gurmukh @ Koka @ Gurmukh Singh @ Koka Petitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.S.Gill, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

1. This is the third petition filed by the petitioner seeking concession of regular bail in case FIR No.27 dated 29.01.2021 under Sections 15, 27(A) and 29 of NDPS Act, 1985 registered at Police Station Sadar Pehowa District Kurukshetra.

2. Learned counsel for the petitioner contends that a secret information was received by the police qua the involvement of the co-accused in drug trafficking, however, as per the admitted case of the prosecution, no secret information was received qua the petitioner. The petitioner was merely working as a cleaner in the canter, which was being driven by the co-accused Vijay Kumar qua whom alleged secret information had been received. Learned counsel has submitted that it was thus, evident that the petitioner



CRM-M-32068-2024

-2-

was not involved in the drug trafficking, which is further fortified from the fact that he is not involved in any other criminal case much less any case under the NDPS Act. It has further been submitted that the petitioner was arrested on 29.01.2021, challan was presented on 20.04.2021 and charges were framed on 23.05.2022, however, till date, only four witnesses out of the 18 cited had been examined; the trial was being delayed on account of the repeated non-appearance of the prosecution witnesses, who in the present case, are all officials. In support of his submissions, learned counsel has produced the zimni orders passed by the trial Court, which are taken on record. Further, 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.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions, has not disputed the stage of trial and has submitted that the next date of hearing before the trial Court is 19.07.2024 when some more prosecution witnesses are likely to be examined. Learned State



CRM-M-32068-2024

-3-

counsel has also not been able to dispute that though charges were framed on 23.05.2022, the trial Court had been adjourning the case time and again on account of the irregular appearances of the prosecution witnesses. It has also not been disputed that no secret information was received qua the petitioner and it had been received only qua co-accused Vijay Kumar, who was driving the Canter in question.

4. On a pointed query put to the learned State counsel, he has not controverted that the petitioner is not involved in any other criminal case much less under the NDPS Act. However, it has been argued that the recovery affected in the crime in question is huge, which had been loaded in the Canter.

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

6. The petitioner has been in custody since 29.01.2021; after the challan was presented and charges framed on 23.05.2022, only 4 witnesses out of the 18 cited by the prosecution have been examined. Hence, the trial would take considerable time to conclude.

7. 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



CRM-M-32068-2024

-4-

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 add here, in case the petitioner is found misusing the concession of bail, the State would be at liberty to approach this Court to seek cancellation of bail to him.

12.07.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

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