

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

225

2024:PHHC:031274

CRM-M-33205-2023

Date of decision: March 5th, 2024

Jaspal Singh @ Gora

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Gagandeep Kaur, Advocate
for the petitioner.

Mr. Navdeep Singh, 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.60 dated 26.05.2022 under Sections 21/22 of the NDPS Act registered at Police Station Kot Isse Khan, District Moga.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been in custody since 26.05.2022 and till date only two witnesses out of the 13 cited by the prosecution have been examined. Learned counsel has further submitted that the petitioner has clean antecedents as he is not involved in any other criminal case much less under the NDPS Act; on the fateful day, he had just taken a lift on the motorcycle of the co-accused when they were stopped by the police leading to the recovery of 250 tablets of Etezolam along with 15 grams of heroin, which was lying in the boot of the motorcycle. Learned counsel submits that since the petitioner was not even the owner of the motorcycle and had merely taken a lift, he could not have been possibly aware of the co-accused carrying the recovered

substances. Learned counsel submits that the petitioner being innocent is duly corroborated with the factum of his non-involvement in any other criminal case.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed the contentions of the learned counsel for the petitioner qua the petitioner having clean antecedents. It has also not been disputed that the alleged recovery was not effected from the conscious possession of the petitioner but from the boot of the motorcycle, which admittedly was in the name of the co-accused qua whom there is one more case pending under the NDPS Act. Learned State counsel has, on instructions from ASI Gurmej Singh, informed the Court that the next date fixed before the trial Court is 27.03.2024 when some more prosecution witnesses are likely to be examined.

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

5. The petitioner has been in custody since 26.05.2022. the trial is unlikely to conclude in the near future as only two witnesses out of the 13 cited by the prosecution have been examined so far. As conceded by the learned State counsel, the petitioner has clean antecedents and is not involved in any other criminal case.

6. 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.
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.

March 5th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No