



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

207

CRM-M-33103-2024

Date of decision: September 20th, 2024

Sunny

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gopal Singh Nahel, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is a second petition filed by the petitioner seeking the concession of regular bail under Section 439 of the Code of Criminal Procedure, 1973, in case FIR No.127 dated 17.06.2022 under Section 21 of the NDPS Act, 1985 registered at Police Station Special Task Force, District STF Wing (SAS Nagar), Punjab.

2. Learned counsel for the petitioner submits that even though the petitioner was arrested way back on 17.06.2022, and thereafter challn was presented on 15.11.2022, with charges being framed on 02.12.2022, however, a perusal of the zimni orders, which have been annexed with the petition, reveals that the trial has been delayed only on account of the repeated non-appearances of the prosecution witnesses, who in the present case are all police officials. In support, learned counsel has drawn the attention of this Court to the zimni orders, which have been annexed as Annexure A-1. It has been further submitted by

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the learned counsel that a perusal of the zimni orders also reveals that on a couple of dates, bailable warrants were issued to secure the presence of the prosecution witnesses, however, still they had failed to put in appearance to get their evidence recorded. Learned counsel has still further argued that even otherwise, it is a case of false implication, which is evident from the fact that the petitioner has no previous criminal antecedents much less being involved in any other case under the NDPS Act.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed the custody period of the petitioner and also the submissions made by the learned counsel for the petitioner qua the repeated non-appearances of the prosecution witnesses to get their evidence recorded. Learned State counsel has, however, submitted that now six witnesses out of the 18 cited by the prosecution have been examined. Learned State counsel has also submitted that the recovery affected from the petitioner i.e. 350 grams of heroin has been classified as commercial under the NDPS Act; it is impossible for the police to plant such a huge recovery so as to implicate the petitioner in the instant case.

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

5. After the charges were framed on 02.12.2022, the prosecution evidence was due to commence on 02.02.2023, however, it is a matter of record that the trial has been delayed for reasons attributable to the prosecution and prosecution alone. The petitioner

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cannot be made to languish in custody to await the appearance of prosecution witnesses, who in the present case are all police officials.

6. On a pointed query put to the learned State counsel as to whether the petitioner has any previous criminal antecedents, he has placed on record petitioner's custody certificate, wherein it stands reflected that other than the present case, he has not been booked in any other criminal case.

7. 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.



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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.

September 20th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No