



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

218

CRM-M-33433-2023

Date of decision: August 1st, 2024

Gajender Saran @ Gajju

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. J.S. Sandhu, 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.120 dated 01.11.2020 under Sections 399, 402, 473, 411, 201, 120-B of the Indian Penal Code, 1860, Sections 21, 25, 29 of the NDPS Act, 1985 and Section 25 of the Arms Act, 1959, registered at Police Station Bhadaur, Barnala.

2. Learned State counsel, on instructions, has not disputed that even though challan in the present case was presented way back on 22.04.2021 and charges framed on 27.10.2021, however, till date, only one witness out of the 49 cited by the prosecution had been examined so far.

3. On a pointed query put to the learned State counsel as to whether the petitioner is involved in any other criminal case under the NDPS Act, he, on instructions, has replied in the negative, however, he has submitted that petitioner is involved in two cases under the Indian

Penal Code. It has also been submitted that the petitioner was named in a

secret information, which was received by the police and pursuant to the said secret information when he was apprehended, a recovery of 500 grams of heroin along with 25 live cartridges was effected from him.

4. Learned counsel for the petitioner submits that the petitioner is willing to furnish heavy surety and also undertakes that he would appear regularly before the trial Court, and would not absent himself even on a single date.

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

6. Vide order dated 08.07.2024, report had been sought from the learned trial Court as to the reasons behind the delay in the conclusion of the trial. In compliance thereof, the learned trial Court has sent its report. As per the report, all the accused, who had been granted the concession of bail by the trial Court, had been absenting themselves during trial, as a result of which evidence of the prosecution witnesses could not be recorded. Furthermore, one of the accused Balwinder Singh had since been declared a proclaimed offender vide order dated 04.11.2023. It has also been reported that vide order dated 15.07.2024, proceedings qua two accused i.e. Amra Ram and Amanpreet Singh were ordered to be split under Section 317(2) of the Cr.P.C. and trial against them had been separated and registered. It is thus, evident that the delay in conclusion of the trial has been on account of the irregular appearance of the co-accused, who had been enlarged on bail by this Court vide different orders. However, this Court cannot lose sight of the fact that the petitioner has been in custody for an inordinately long period since 01.11.2020.

The possibility of the trial concluding in the near future looks extremely bleak. Petitioner is not stated to be involved in any other case under the NDPS Act.

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 subject to heavy surety 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 absents himself during trial or is found misusing the concession of bail granted to him, the prosecution would be at liberty to seek cancellation of the same.

August 1st, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No