



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

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CRM-M-32777-2024

Date of decision: 17.07.2024

Sukhwinder Singh @ Sukha

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Fariad Singh Virk, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (third) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.212 dated 28.10.2022 under Sections 21 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Sadar Jagraon, Ludhiana.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 28.10.2022 and after the charges were framed on 24.05.2023 only 03 witness out of the 16 cited by the prosecution had been examined till date. It has been further argued that even otherwise the alleged recovery effected was just marginally higher than the threshold provided under the NDPS Act with respect to heroin since the recovery effected was 255 grams. It has still further been submitted that it has not been disputed by the prosecution as well that the alleged recovered contraband had been weighed along with plastic



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bag and hence, there was every likelihood that the recovered contraband was below 250 grams. Learned counsel has further argued that the trial has not concluded till date on account of the irregular appearance of the prosecution witnesses, for which the petitioner cannot be made to languish in custody as it is a matter of record that he is not involved in any other criminal case much less under the NDPS Act. Learned counsel has submitted that in identical circumstances, Hon'ble the Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]*** had extended the concession of bail to the accused therein by dispensing with the conditions of Section 37 of the NDPS Act.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from SI Surjit Singh, has however, submitted that the recovery effected from the petitioner along with the co-accused were travelling together in a car when they were intercepted on suspicion; thereafter a recovery of 255 grams of heroin was effected from the hand brake of the car. It has, however, on instructions not been disputed by the learned State counsel that the petitioner has clean antecedents and has never been involved in any other criminal case. Learned State counsel has also not disputed the stage of trial and has further submitted that the next date fixed before the learned Trial Court is 08.08.2024 when some of the remaining 13 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 28.10.2022. The



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possibility of the trial concluding in the near future seems unlikely. The petitioner is not involved in any other criminal case much less under the NDPS Act. Hon'ble the 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.”

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

7. 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.

17.07.2024

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(MANJARI NEHRU KAUL)
JUDGE

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