



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

CRM-M No.34814 of 2024

Date of decision: 3rd September, 2024

Hari Sahni

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sumeet Pal S. Khaira, Advocate for the petitioner.

Mr. Amit Rana, Sr. Dy. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. This is the second petition filed by the petitioner under Section 439 Cr.P.C. in case FIR No.185 dated 01.11.2022 under Sections 20, 27, 29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Govt. Railway Police, Ludhiana.

2. Learned counsel for the petitioner has argued that he has been falsely implicated in the present case and a false recovery of 5 kgs of Charas planted upon him after being allegedly nabbed on suspicion by the police. It has also been contended by the learned counsel for the petitioner that after the petitioner was arrested on 01.11.2022, challan was presented on 28.04.2023 and charges framed on 05.07.2023, however, till date only 2 prosecution witnesses out of the 18 cited had been examined; the trial was being adjourned repeatedly by the trial



Court on account of repeated non-appearances of the prosecution witnesses, who in the present case are all police officials. Learned counsel, while placing reliance upon '**Javed Gulam Nabi Shaikh vs. State of Maharashtra & another**' CRA No.2787 of 2024 d/d **03.07.2024**, has submitted that the petitioner cannot be made to languish in custody on account of the irregular appearances of the prosecution witnesses, as it amounts to compromising with his personal liberty and right to speedy trial, as envisaged under the Constitution of India. In particular, learned counsel has invited the attention of this Court to para No.19 of **Javed Gulam Nabi Shaikh's case (supra)**, wherein it has been observed by Hon'ble the Supreme Court that the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious if it cannot protect the right of speedy trial provided to an accused under Article 21 of the Constitution of India. A prayer has therefore, been made for extending the concession of bail to the petitioner, as his further incarceration would serve no useful purpose.

3. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite by arguing that incorrect submissions have been made that the prosecution witnesses had been repeatedly absenting themselves before the trial Court, leading to a delay in the conclusion of the trial. Learned State counsel has placed on record zimni orders of the trial Court and asserted that a perusal of the same clearly reflects that it is not on



account of the non-appearances of the prosecution witnesses that the trial has not proceeded further. It has been submitted by learned State counsel, on instructions, that on each and every date of hearing, the summoned prosecution witnesses had appeared before the trial Court for recording of evidence; no doubt, on two dates, the examination of the prosecution witnesses was deferred for want of case property. Learned State counsel has also contended that once the prosecution witnesses were regularly appearing before the trial Court, the petitioner could not seek the concession of bail on account of there being delay in the conclusion of the trial.

4. Learned State counsel has still further vehemently contended that there is no question of the petitioner being framed in the present case; a huge recovery of 5 kgs Charas, much more than the minimum classified as commercial under the NDPS Act, was affected from the conscious possession of the petitioner and that too, after due compliance of all the mandatory provisions of the NDPS Act.

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

6. There is no dispute that in case trial is delayed, the accused cannot be made to languish in custody as it would indeed amount to compromising with his right to speedy trial, however, in the present case, challan was presented on 28.04.2023 and charges framed on 05.07.2023. Out of the 18 prosecution witnesses cited, 2 stand examined and while 01 witness has been given up; furthermore, the



allegations in this case are grave and this Court cannot turn a blind eye to the huge recovery of contraband i.e. 5 kgs of Charas, which has allegedly been affected from the conscious possession of the petitioner and is much more than the minimum classified as commercial under the Act. The case law relied upon by the learned counsel would not come to his rescue being distinguishable on facts, as therein the accused had been in custody for 4 years and charges had not been framed, whereas in the instant case, the accused has been in custody for less than 2 years, charges have been framed on 05.07.2023 and the prosecution evidence is well underway as 2 prosecution witnesses stand examined.

7. In the facts and circumstances as enumerated hereinabove and in view of the bar created under Section 37 of the NDPS Act, this Court does not deem it fit to extend the concession of bail to the petitioner. The petition as such is dismissed. 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.

(MANJARI NEHRU KAUL)
JUDGE

September 3, 2024
rps

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