



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

231

1.

CRM-M-36053-2024
Date of decision: December 3rd, 2024
- Gursahib Singh @ Sabba

.....Petitioner
- Versus
- State of Punjab

.....Respondent
2.

CRM-M-46227-2024
- Tejbir Singh

.....Petitioner
- Versus
- State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner (in CRM-M-36053-2024).

Mr. A.S. Virk, Advocate
for the petitioner (in CRM-M-46227-2024).

Mr. Shiva Khurmi, Assistant Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above-mentioned petitions filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioners, as they arise out of same FIR i.e. FIR No.115 dated 23.05.2023 under Sections 21, 25, 29, 27-A of the NDPS Act, 1985, registered at Police Station Jandiala, District Amritsar.

2.

Learned counsel for the petitioners have at the outset placed on record the zimni orders of the trial Court and submitted that a perusal of the same reveals that after the charges were framed more than a year back

on 24.11.2023, only one prosecution witness had been examined-in-chief and on all the subsequent dates, the trial Court had had to adjourn the case on account of the repeated non-appearances of the prosecution witnesses. Learned counsel has submitted that in the circumstances, the petitioners, who have been in custody since 24.05.2023, deserve to be enlarged on the bail as the conclusion of the trial was being delayed for reasons attributable not to the petitioners but to the prosecution and prosecution alone. It has been submitted that in almost identical circumstance, Hon'ble the Supreme Court in a number of cases including *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023* has done away with the bar under Section 37 of the NDPS Act and extended the concession of bail to the accused.

3. It has also been argued by the learned counsel for the petitioners that as per the case of the prosecution, the petitioners were nabbed on suspicion and thereafter, a recovery of 275 grams of heroin was allegedly affected from them along with the ₹1 lakh drug money and a firearm along with some ammunition. It has been asserted by the learned counsel that a false recovery has been planted upon the petitioners as it is a matter of record that petitioner-Gursahib Singh alias Sabba has no previous criminal antecedents.

4. *Per contra*, learned State counsel, while opposing the prayer and submissions made by both the counsel opposite, has not disputed the custody period of the petitioners nor has he disputed the stage of trial. It has also not been disputed that no secret information was ever received qua the involvement of both the petitioners in drug

trafficking and instead, it was a case of chance recovery. Learned State counsel has, however, submitted that the alleged recovery affected from the petitioners has been classified as as commercial under the NDPS Act.

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

6. The petitioners have been in custody since 24.05.2023. The trial is unlikely to conclude in the near future.

7. Hon'ble the Supreme Court in *Dheeraj Kumar Shukla's case (supra)* 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. Petitioners be admitted to bail to their 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.

10. Needless to say, in case the petitioners misuse the concession of bail granted to them, the State would be at liberty to seek cancellation of the same.

December 3rd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

:

No