



CRM-M-36517-2024

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224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36517-2024
Decided on : 25.09.2024

Vijay Kumar Petitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.S.Gill, Advocate
for the petitioner.

Ms. Trishanjli Sharma, DAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

1. This is the second petition filed by the petitioner under Section 483 of BNSS seeking concession of regular bail in case FIR No.27 dated 29.01.2021 under Sections 15, 27-A and 29 of NDPS Act, 1985 and Section 201 IPC registered at Police Station Sadar Pehowa District Kurukshetra.
2. Learned counsel for the petitioner submits that despite the petitioner being arrested in the present case on 29.01.2021, the trial had not concluded yet; 13 prosecution witnesses out of the 18 cited still remain to be examined. Learned counsel for the petitioner has further submitted that in the circumstances and keeping in view the long custody period of the petitioner, he cannot be made to languish in custody, for reasons attributable not to him, but to the prosecution and



prosecution alone. Learned counsel has further drawn the attention of this Court to the zimni orders, annexed as Annexure P-4 and contended that a perusal of the same reveal that on most of the dates before the Trial Court, the case has been adjourned on account of the repeated non-appearances of the prosecution witnesses. Learned counsel, while placing reliance on ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP (Crl.) No.6690/2022]***, has submitted that in identical circumstances on account of delayed trial, Hon'ble the Supreme Court had done away with the bar under Section 37 of the NDPS Act, even though in the said case, the recovered contraband had been classified as commercial. A prayer has, therefore, been made to extend the concession of bail to the petitioner.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions, has not been able to dispute the custody period of the petitioner and the stage of the trial. She has, however, submitted that a specific secret information had been received qua the involvement of the petitioner in drug trafficking. Subsequent to the secret information, the petitioner was intercepted by the police while he was driving a truck. On being apprehended, a huge recovery of 4 Qtl. 1 kg of poppy husk was affected along with certain other goods, which were being transported in the truck.

4. On a pointed query put to the learned State counsel as to



whether the petitioner has previously been involved in any criminal case, she, on instructions, has replied in the negative.

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

6. No doubt, as per the allegations levelled in the FIR, the recovery affected from the petitioner has been classified as commercial under the NDPS Act, however, this Court cannot turn a blind eye to the long incarceration of the petitioner, who has been in custody since 29.01.2021. In the present case, challan was presented on 20.05.2021 and charges were framed on 23.05.2022; however, in the last two and a half years, only five prosecution witnesses have been examined. A perusal of the zimni orders (Annexure P-4) clearly reveal that it is on account of the repeated absence of the prosecution witnesses before the Trial Court on most of the dates, the trial has been unduly prolonged.

7. The 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.”



9. 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.
10. 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.
11. 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.
12. 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.

25.09.2024
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(MANJARI NEHRU KAUL)
JUDGE

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