



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

229

CRM-M-37831-2024

Date of decision: 12.09.2024

Iqbal Singh @ Gaalu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amit Sharma, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J.

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.88 dated 03.08.2022 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') (Section 29 of the NDPS Act added lateron) registered at Police Station Navi Baradari, District Jalandhar.

2. At the outset a pointed query was put to the learned counsel for the petitioner as to what was the material change in circumstances after the withdrawal of the previous petition wherein a similar relief had been sought by the petitioner, it has been submitted that the trial had failed to make much headway and the petitioner's right to a speedy trial was being compromised on account of the repeated non-appearance of prosecution witnesses.

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3. Learned counsel for the petitioner has further contended that he was allegedly intercepted on suspicion by the police leading to the recovery of 275 grams of heroin from his possession. Learned counsel for the petitioner submits that it is evidently a case of false implication as it is a matter of record that the petitioner has never been booked in any criminal case much less under the NDPS Act. It has been further argued that the alleged recovery was in a polythene bag, and, even if it is assumed, though not admitted, that he was carrying the contraband, the weight of 275 grams of heroin was obtained by weighing it along with the polythene bag. Learned counsel has asserted that, without the bag, the weight could have been less than 250 grams, which is below the threshold from commercial quantity under the NDPS Act.

4. Additionally, the learned counsel for the petitioner has pointed out that he has been in custody for over two years since his arrest on 03.08.2022, and the trial has been delayed due to the repeated non-appearance of prosecution witnesses. It has been highlighted by him that, although the challan was presented on 27.01.2023, and charges were framed on 16.03.2023, only 02 out of the 10 prosecution witnesses have been examined to date. Despiteailable warrants being issued, the prosecution witnesses, all police officials, have been irregular in appearing before the learned Trial Court. Given these delays and the fact that the petitioner has no other criminal cases registered against him, it has been argued that further incarceration of the petitioner would serve no useful purpose, as the trial will take



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considerable time to conclude. In support, learned counsel has placed reliance upon *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]*.

5. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has asserted on instructions, that the recovered contraband qualifies as a commercial quantity and that the recovery was effected after due compliance with the mandatory provisions of the NDPS Act. He has still further argued that no enmity has been alleged against the police officials to suggest the false implication of the petitioner. However, learned State counsel on instructions has not disputed the stage of the trial and the factum of the petitioner not being involved in any other case. Learned State counsel on further instructions submits that although only 02 prosecution witnesses have been examined so far, however, 02 others have been given up by the prosecution and the prosecution would ensure the presence of the remaining prosecution witnesses on the coming dates before the learned Trial Court.

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

7. The petitioner has been in custody since 03.08.2022. As not disputed by the learned State counsel, on instructions, after the charges were framed on 16.03.2023, only 02 prosecution witnesses have been examined and the case has been adjourned on account of the non-appearance of the prosecution witnesses. In the instant case the recovered contraband is just marginally higher than the minimum



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classified as commercial coupled with the fact that the petitioner is not involved in any other criminal case, this Court deems it fit to extend the concession of bail to the petitioner by dispensing with the conditions of Section 37 of the NDPS Act as in an identical case 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.”

8. 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.

9. 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.

12.09.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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