

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215

CRM-M-40800-2023

Date of decision: 25.01.2024

Sandeep Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Isha Goyal, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (second) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.111 dated 07.09.2022 under Sections 21C/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Mohkampura, District Amritsar City.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 07.09.2022 for having been allegedly found in possession of 260 grams of heroin which was just marginally higher than the minimum classified as commercial under the NDPS Act. It has also been submitted that it is a case of false implication. Learned counsel has further submitted that after the challan was presented on 15.02.2023, charges were framed on 31.03.2023, however, till date the prosecution evidence had not even concluded on account of the continuous non-appearance of the prosecution witnesses as only 01 out of the 12 witnesses cited by the prosecution had been examined till date. In the circumstances, the petitioner cannot be made

to languish in custody for reasons attributable only to the prosecution as it was a matter of record that despite issuance of bailable warrants to secure the presence of the prosecution witnesses, they had still not appeared before the Trial court for getting their evidence recorded. It has also been submitted that the petitioner has clean antecedents as he is not involved in any other criminal case much less under the NDPS Act.

3. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Nautej Singh, has submitted that a secret information was received qua the petitioner and it was thereafter that he was intercepted by the police party; after compliance of all the mandatory provisions of the NDPS Act, the recovery of 260 grams of heroin was effected from the petitioner. Leaned State counsel has, however, not controverted the submissions made by the counsel opposite qua the trial having come to a virtual standstill on account of the non-appearance of the prosecution witnesses, who in the case in hand, are all official witnesses. It has also not been disputed, on instructions, that bailable warrants had indeed been issued by the Trial Court to secure the presence of the prosecution witnesses but in vain.

4. On a pointed query put to the learned State counsel, he, on instructions has not disputed that the petitioner has clean antecedents as he is not involved in any other criminal case much less under the NDPS Act.

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

6. The petitioner has been in custody since 07.09.2022. The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. The trial is unlikely to conclude in the near future.

7. 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.”

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. 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.

10. 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.

25.01.2024

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No