

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

217

2024:PHHC:011400

CRM-M-41080-2023

Date of decision: January 29, 2024

BALJOT SINGH @ JOT

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. P.S. Sekhon, Advocate
with Mr. Rajdeep Singh Gill, Advocate
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.68 dated 07.07.2022 under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sandaur, Malerkotla.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been custody since 07.07.2022 and till date, only 2 prosecution witnesses out of the 14 cited have been examined and hence, there is no likelihood of the trial concluding in the near future. Learned counsel has placed on record the *zimni* orders of the learned trial Court w.e.f. 15.03.2023 to 22.01.2024 and submitted that a perusal of these orders reveal that despite the prosecution witnesses being summoned time and again including through non-bailable warrants on 3 occasions, they had not stepped into the witness box to get their evidence recorded.

3. Learned counsel submits that even otherwise, the recovery allegedly effected from the petitioner i.e. 65.600 grams of intoxicant tablets, is just marginally higher than the minimum classified as ‘commercial’ under the NDPS Act. Learned counsel has, thus, prayed for the petitioner being enlarged on bail as he could not be made to languish in custody for reasons attributable to the prosecution alone.

4. *Per contra*, learned State counsel, while opposing the prayer and submissions made by the learned counsel for the petitioner, on instructions, has submitted that the recovery effected has been classified as ‘commercial’, however, learned State counsel, on instructions, has not controverted the submissions made by the counsel for the petitioner *qua* the prosecution witnesses continuously absenting themselves before the trial Court despite issuance of non-bailable warrants to secure their presence. Learned State counsel has further submitted that though only 2 prosecution witnesses have been examined till date, however, 7 prosecution witnesses had been given up; now only 5 prosecution witnesses remained to be examined.

5. On a pointed query put to the learned State counsel as to whether the petitioner has any criminal antecedents, he, on instructions, has replied in the negative.

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

7. The Hon’ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2021]*** 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. Petitioner be admitted to bail 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.

January 29, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No