

2024:PHHC:166272



230.

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

CRM-M-41247-2024

Date of decision: 12.12.2024

Sandip Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Jashandeep Singh Sandhu, Advocate, for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.21, dated 03.02.2022, under Section 15 of NDPS Act, 1985 (Sections 27-B and 29 of NDPS Act added lateron) registered at Police Station Khuian Sarwar, District Fazilka.

Learned counsel for the petitioner submits that the petitioner has been in custody since 03.02.2022 for allegedly having been found in possession of 150 kgs of poppy husk following a secret information. It has been asserted by the learned counsel that no doubt, the petitioner is also facing trial in one other case under the NDPS Act wherein recovery of 10 kgs of poppy husk (non-commercial quantity) was allegedly effected from him, however, the trial has come to a virtual standstill as only three prosecution witnesses out of 11 cited have been examined after the charges

were framed on 03.08.2023. It has been asserted by learned counsel for the petitioner that despite issuance ofailable and non-ailable warrants to secure the presence of the prosecution witnesses including the Investigating Officer of the present case, none has appeared before the trial Court to get their evidence recorded and hence, there is no possibility in the aforementioned facts and circumstances for the trial to conclude in the foreseeable future. It has also been submitted by the learned counsel that the Investigating Officer of the present case has since retired from service and thereafter, has flown out of the country.

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel opposite, has not disputed the custody period of the petitioner nor has the stage of trial been disputed on instructions. Learned State counsel has also not disputed that despite issuance of non-ailable warrants on a number of dates by the learned trial Court, the prosecution witnesses including the Investigating Officer, who are all police officials, had been absenting themselves before the trial Court. Learned State counsel has, however, submitted that the petitioner was arrested in the present case after a secret information was received qua his involvement in drug trafficking and the alleged recovery i.e. 150 kgs of poppy husk (commercial quantity) was made after due compliance of the mandatory provisions of the NDPS Act.

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

The petitioner has been in custody for close to three years having been arrested on 03.02.2022. Challan in the present case was presented on 30.05.2022 followed by framing of charges on 03.08.2023. However, till date, only three prosecution witnesses stand examined. Therefore, the trial would take considerable time to conclude, as the remaining prosecution witnesses have been absenting themselves before the trial Court despite issuance ofailable and non-ailable warrants to secure their presence.

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.”

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.

Accordingly, the instant petition is allowed and 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.

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.

(MANJARI NEHRU KAUL)
JUDGE

December 12, 2024
sanjeev

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