

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.02.2024****1. CRM-M-42933-2023**

Gulwinder Singh @ Galwinder Singh @ Sarpanch

...Petitioner

Vs.

State of Punjab

...Respondent

2. CRM-M-42850-2023

Navjot Singh @ Jota

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**Present:** Mr. Sant Pal Singh Sidhu, Advocate,
for the petitioner (in CRM-M-42933-2023).Mr. R.S. Sekhon, Advocate,
for the petitioner (in CRM-M-42850-2023).

Mr. Navdeep Singh, Deputy Advocate General, Punjab.

Manjari Nehru Kaul, J.

1. This order shall dispose of two petitions i.e. CRM-M-42933-2023 and CRM-M-42850-2023 together as both have arisen out of one FIR.

For reference, facts are being taken from CRM-M-42933-2023.

2. The petitioners are seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.142 dated 28.10.2020, under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances

(Mohali).

3. Learned counsel for the petitioners submits that the petitioners were arrested on 28.10.2020 for having been found in possession of 500 grams of heroin. Learned counsel submits that a false and fabricated case has been planted on the petitioners. Learned counsel has still further submitted that the challan, in the instant case, was presented way back on 15.03.2021, which was then followed with the framing of charges on 17.11.2021. However, till date, only one prosecution witness, out of 13 cited, had been examined. Learned counsel for the petitioners has asserted that the trial has not concluded and has been lingering on only on account of the prosecution witnesses not appearing before the trial Court and seeking adjournments on some pretext or the other. Learned counsel has further submitted that the petitioners cannot be made to languish in custody for reasons not attributable to them, but to the prosecution and the prosecution alone. Learned counsel has still further placed reliance upon the judgment passed in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023*** and submitted that in similar circumstances on account of the prolonged pendency of the trial, the Hon'ble Supreme Court had done away with the bar provided under Section 37 of the NDPS Act and extended the concession of bail to the accused therein.

4. Learned State counsel has filed an affidavit of the Assistant Inspector General of Police, Special Task Force (STF), Border Range, Amritsar, District Amritsar, in compliance of the order dated

13.12.2023 passed by this Court. As per the reply filed, it has not been controverted that the evidence in the case in hand is still underway. As per the contents of the affidavit, which has been placed on record today, examination-in-chief of only one official witness has been done and that too partly, whereas another witness has been given up by the prosecution. Learned State counsel has submitted that the next date fixed before the trial Court is 25.02.2024 when the prosecution would make earnest efforts to get the examination-in-chief of SI Vinod Sharma concluded. It has also been brought to the notice of the Court that though the petitioner-Navjot Singh @ Jota is not involved in any other criminal case, however, petitioner-Gulwinder Singh @ Galwinder Singh @ Sarpanch is involved in another case under the NDPS Act. However, that case was registered prior to registration of the FIR in question and therein 50 grams of heroin (non commercial quantity) had been recovered. Learned State counsel has also brought to the notice of this Court that an offence under the Prisons Act was committed by petitioner-Gulwinder Singh, for which, an FIR stood registered against him.

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

6. As not disputed by the learned State counsel, the evidence has not concluded on account of the lackadaisical approach of the prosecution witnesses, who in the case in hand, are all official witnesses. It is evident that they have not been appearing to get their

Supreme Court in ***Dheeraj Kumar Shukla's*** case (ibid), extended the concession of bail to the accused therein by doing away with the bar created under Section 37 of the NDPS Act only on account of the prolonged incarceration of the accused therein. In ***Dheeraj Kumar Shukla's*** case (ibid), the accused did not have any criminal antecedents, however, in the instant case, as not disputed by the learned State counsel, another case stands registered against petitioner-Gulwinder Singh, was much prior in time to the case in hand. The personal liberty of the accused cannot be compromised for no fault of his.

7. Hon'ble the Supreme Court in '***Dheeraj Kumar Shukla's*** case (ibid), 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 fit to extend the concession of bail to the petitioners. The petitions (CRM-M-42933-2023 and CRM-M-42850-2023) as such are allowed by dispensing with the conditions of Section 37 of the NDPS Act and the petitioners are admitted to bail to the satisfaction of the trial Court/Duty Magistrate. 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 here, in case the petitioners misuse the concession of bail, the State would be at liberty to approach this Court for cancellation of bail in the instant case.

(MANJARI NEHRU KAUL)
JUDGE

15.02.2024

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No