



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

230**CRM-M-41954-2024****Date of decision: 03.09.2024****ASHOK KUMAR**

...Petitioner

V/s

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Manmeet Singh Rana, Advocate, for the petitioner.

Mr.Amit Rana, Sr.DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 in case FIR No.210 dated 24.08.2022 under Sections 22/25/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Learned counsel for the petitioner has, at the outset, drawn the attention of this Court to Annexure P-2 which is the order granting bail to co-accused-Sunil Kumar by this Court. Learned counsel while drawing the attention of this Court to the aforesaid order has submitted that the petitioner is identically placed as Sunil Kumar who was granted the concession of bail on account of the fact that the prosecution witnesses had been repeatedly absenting themselves before the trial Court even though



charges were framed way back on 19.7.2023; bailable warrants were also issued to secure the presence of the prosecution witnesses who in the present case are all police officials, however they had still failed to appear before the trial Court to get their evidence recorded. Learned counsel has submitted that in the aforementioned facts and circumstances since the petitioner has now been in custody for more than two years having been arrested on 24.08.2022, he could not be made to languish in custody for an indefinite period to await the appearance of the prosecution witnesses to get their statements recorded. It has also been submitted on merits that even otherwise the alleged recovery i.e of 4500 tablets of Tramadol was not affected from the conscious possession of the petitioner but was lying on the rear seat of the car in which the petitioner along with two others was travelling. Learned counsel has also asserted that the car in which the petitioner was travelling along with the co accused was not registered in his name. On a further query put to the learned counsel as to whether he is involved in any other case under the NDPS Act, he has categorically replied in the negative. Learned counsel has submitted that in identical circumstances, Hon'ble the Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]*** had extended the concession of bail to the accused therein by dispensing with the conditions of Section 37 of the NDPS Act.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite has, on instructions from



ASI Gurmej Singh, not been able to dispute the submissions made by the counsel opposite qua the repeated absence of the prosecution witnesses before the trial Court on a number of dates. It has also not been disputed that despite issuance ofailable warrants to secure the presence of the witnesses, they had failed to appear. However, learned State counsel has submitted that 04 prosecution witnesses out of the 14 cited stand examined and the next date fixed before the trial Court is 30.09.2024. It has also been argued by the learned State counsel that the recovery affected from the vehicle in which the petitioner was travelling along with the co accused has been classified as commercial under the NDPS Act.

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

5. The petitioner has been in custody since 24.08.2022. It is a matter of record that the prosecution witnesses, who in the present case, are police officials have been irregular in their appearances before the trial Court. 14 prosecution witnesses still remain to be examined. The petitioner is not stated to be involved in any other case under the NDPS Act and in the present case also he was nabbed on the basis of suspicion. 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.”

In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner.

6. 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.

7. 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.

September 03, 2024
poonam

(MANJARI NEHRU KAUL)
JUDGE

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