

240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46410-2023
Decided on : 16.01.2024

Shiv Kumar @ Shiva Shull

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sahil Puri, Advocate
for the petitioner.

Mr. Mohit Kapoor, Addl. AG, Punjab.

Manjari Nehru Kaul, J.(Oral)

1. Instant petition has been filed by the petitioner seeking concession of regular bail in case FIR No.110 dated 15.04.2023 under Sections 21(c) and 29 of NDPS Act, 1985 registered at Police Station Special Task Force District Kapurthala.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been in custody since 15.04.2023 in a case of false implication. It has been further submitted that as per the allegations levelled in the FIR in question, which has been annexed as Annexure P-1, a secret information was allegedly received qua the petitioner and two others to the effect that they dwere involved in the sale and purchase of heroin and subsequently, were apprehended by the police. Learned counsel submits that in fact the petitioner is innocent and a false

recovery of 300 grams of heroin was planted upon him. Learned counsel further submits that after the challan was presented on 05.10.2023, charges were framed on 18.12.2023, however, till date, not even a single prosecution witness had been examined and thus, there was no likelihood of the trial concluding anytime in the near future. It has still further been asserted by the learned counsel that the very factum of mandatory provisions of the NDPS Act having not been properly complied with by the investigating agency fortified his assertion of being falsely implicated in the case in hand for which he deserved to be enlarged on bail.

3. Per contra, learned State counsel while opposing the prayer and submissions made by counsel opposite has submitted that a specific secret information had been received qua the involvement of the petitioner and two others in the sale and purchase of narcotic substances; subsequent thereto, when they were intercepted by the police party a huge recovery falling under the commercial quantity i.e. 300 grams of heroin was effected from the car in which the petitioner along with the co-accused was travelling. It has been submitted that offer of search was given to the petitioner and it was only thereafter, the petitioner was searched by a Gazetted Officer. Learned State counsel has further submitted that as to whether there was total or partial compliance of mandatory provisions of the NDPS Act as was being asserted by the learned counsel for the petitioner, it cannot be gone into at this stage and would be a matter to be delved into by the trial Court when the evidence is led. It has still further

been submitted that the petitioner is a man of criminal antecedents, which is evident from the perusal of his custody certificate, which has been placed before this Court. It has also been submitted that the petitioner is involved in 7 other criminal cases including cases under NDPS Act and for various offences under the Indian Penal Code. Learned State counsel on instructions has informed the Court that the trial had been progressing at a reasonably good pace after the petitioner was arrested on 15.04.2023. The prosecution had cited 14 prosecution witnesses and on the next date of hearing, the evidence of prosecution is to commence. Hence, since all the witnesses were officials, the apprehension of the counsel for the petitioner that the trial would possibly take a long time to conclude was misplaced and there was every likelihood that the trial would conclude within the next 5 to 6 months.

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

5. The petitioner as per allegations levelled in the FIR was named in a secret information and subsequently, apprehended with 300 grams of heroin along with co-accused, which has been classified as commercial under the Act. *Prima facie*, he also comes across as a habitual offender as the petitioner was nabbed with the recovered contraband while he was on bail in the other criminal cases, which stand registered against him. It is evident that he has misused the concession of bail, which had been granted to him in the other criminal cases registered against him.

6. In the facts and circumstances as enumerated hereinabove, this

Court does not deem it fit to extend the concession of regular bail to the petitioner. Accordingly, the instant petition stands dismissed.

7. 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.

16.01.2024
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(MANJARI NEHRU KAUL)
JUDGE

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