

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

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2024:PHHC:038318

CRM-M-45725-2023

Date of decision: March 18th, 2024

Davinder Kumar @ Toti

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is a second petition filed by the petitioner seeking the concession of regular bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.198 dated 11.10.2022 under Sections 22, 27-A and 29 of the NDPS Act, 1985, registered at Police Station Phase I, Mohali.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been in custody since 15.10.2022 for having allegedly supplied the recovered contraband i.e. 350 grams of Buprenorphine to co-accused Samanjit Singh, who was nabbed on suspicion by the police while he was travelling in his car. Learned counsel submits that as per the case of the prosecution itself, the petitioner was not present along with the co-accused, however, he came to be nominated as an accused on the basis of a disclosure statement allegedly suffered by co-accused Samanjit Singh, wherein he stated that the recovered contraband had been supplied to him by the petitioner. Learned counsel submits that the evidentiary value of such a disclosure statement is of a weak nature.

It has also been submitted that even though the challan was presented way back on 06.04.2023 and charges were framed on 05.06.2023, till date only two witnesses had been partly examined out of the 14 cited by the prosecution and hence, the trial would take considerable time to conclude. Learned counsel has also submitted that on the preceding two dates i.e. 15.01.2024 and 16.02.2024, since the prosecution witnesses did not appear to get their evidence recorded,ailable warrants had been issued to secure their presence for 06.04.2024. A prayer has, therefore, been made for enlarging the petitioner on bail.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Tarsem Singh, has not disputed that the petitioner was not present with the co-accused when the alleged recovery was effected. It has further not been controverted that the petitioner came to be nominated on the basis of a disclosure statement suffered by co-accused.

4. On a pointed query put to the learned State counsel as to whether pursuant to the disclosure statement made by co-accused, any recovery of contraband was effected from the petitioner, he on instructions, has replied in the negative. However, learned State counsel has brought to the notice of this Court that the petitioner is involved in one other case under the NDPS Act in which he has since been enlarged on bail.

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

6. In the facts and circumstances as enumerated hereinabove, coupled with the fact that after the charges were framed on 05.06.2023, only two prosecution witnesses out of the 14 had been partly examined,

it is unlikely that the trial would conclude anytime in the near future, the instant petition is allowed. The 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.

7. Needless to say, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

March 18th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

:

No