

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108+220

CRM-M-50544-2023 (O&M)

Date of decision: 12.02.2024

Suraj Gupta

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Randeep Singh Waraich (Rana), Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-1658-2024

In view of the reasons mentioned in the application, the same is allowed and copies of zimni orders of the Trial Court, are taken on record as Annexure P-4, subject to all just exceptions.

CRM-M-50544-2023

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.287 dated 21.11.2022 under Sections 20C, 25, 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Division No.6, Ludhiana (charges framed under Section 20 of the NDPS Act only).

2. Learned counsel for the petitioner Inter alia contends that the petitioner, who has been in custody since 21.11.2022, has been falsely implicated in the case in hand for having allegedly been found

in possession of 30 kgs of ganja. Learned counsel submits that though a secret information was allegedly received qua the involvement of the petitioner and the co-accused of their involvement in the sale and purchase of narcotics, however, the mandatory provisions of the NDPS Act were not complied with, during their search, which left no manner of doubt qua a false recovery having been planted upon him. It has been further submitted that after the charges were framed on 17.05.2023, the Trial Court had repeatedly adjourned the case on account of the non-appearance of the prosecution witnesses; it was also a matter of record that on a number of dates, bailable and non-bailable warrants too had been issued by the Trial Court to secure the presence of the prosecution witnesses, who in the instant case, are all official witnesses, however, still none of them had put in appearance before the Trial Court to get their evidence recorded. In support, learned counsel has drawn the attention of this Court to zimni orders which have been annexed as Annexure P-4 with CRM-1658-2024. Learned counsel submits that in the facts and circumstances, the petitioner cannot be made to languish in custody for reasons attributable to the prosecution and hence, he deserves to be enlarged on bail. In support, learned counsel has also placed reliance upon ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023***, wherein the Hon'ble Apex Court in almost identical facts and circumstances, had extended the concession of bail to the accused.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from ASI Balbir Singh, has not been ale to dispute the factum of the prosecution

witnesses absenting themselves before the Trial Court. He has also not been able to controvert the contents of the zimni orders which have been placed on record. However, he submits that the recovery effected from the petitioner was 30 kgs of ganja which was 10 kgs more than the minimum classified as commercial under the NDPS Act. Learned State counsel has also filed custody certificate of the petitioner which is taken on record subject to all just exceptions, wherein it stands revealed that the petitioner is not involved in any other criminal case.

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

5. The Hon'ble Apex 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.”

6. The petitioner cannot be made to languish in custody on account of the prosecution witnesses choosing not to get their evidence recorded despite repeatedly being summoned through bailable and non-bailable warrants; it does not lie in the mouth of the State in the aforementioned facts and circumstances to oppose the prayer made by the counsel for the petitioner for being extended the concession of bail.

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.

7. Accordingly, the instant petition is allowed. 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.

8. 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.

12.02.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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