



CRM-M-49219-2024

-2-

the prosecution and prosecution alone. Learned counsel, while placing reliance on ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP (Crl.) No.6690/2022]***, has submitted that in identical circumstances on account of delayed trial, Hon'ble the Supreme Court had done away with the bar under Section 37 of the NDPS Act, even though in the said case, the recovered contraband had been classified as commercial.

Learned counsel has also submitted that a false recovery of 1150 tablets of Tramadol, 15 grams of heroin, computer scale along with 20 small pouches, Rs.32,000/- and one .32 bore pistol along with three live cartridges had been planted upon the petitioner.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner has not disputed the custody period of the petitioner as well as stage of trial. Learned State counsel, on instructions from ASI Gurmail Singh, has submitted that the delay in conclusion of the trial has been on account of supplementary challan having been presented against some of the co-accused.

4. On a pointed query put to the State counsel as to whether the petitioner has any previous criminal antecedents, he, on instructions, has submitted that although the petitioner was previously involved in one case under the NDPS Act, however, he has served out his sentence in that case.

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

6. The petitioner has been in custody since 27.05.2022. The



trial will take considerable time to conclude as only three prosecution witnesses have been examined till date and the delay in the conclusion of trial has been on account of the irregular appearances of the prosecution witnesses. 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.”

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

8. 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.



CRM-M-49219-2024

-4-

9. 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.

14.10.2024
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(MANJARI NEHRU KAUL)
JUDGE

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