



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

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CRM-M-49356-2024

Date of decision: December 10th, 2024

Harmanjit Singh @ Harry

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. L.M. Gulati, 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 in case FIR No.207 dated 04.07.2023 registered under Section 21 (c) of the NDPS Act, 1985, at Police Station Sadar, Amritsar.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 04.07.2023 for allegedly being caught with 276 grams of heroin. Learned counsel submits that as per the case of the prosecution, it was on suspicion that the petitioner was apprehended leading to the aforesaid recovery. Learned counsel submits that the petitioner's false implication in the present case is evident from the fact that he has no previous criminal antecedents much less ever being involved in a case under the NDPS Act. It has also been submitted by the learned counsel that even though challan was presented way back on 21.11.2023 followed by framing of charges on 01.12.2023, however, it is a matter of record that for as long as one year not even a single

prosecution witness was examined and that too on account of the repeated non-appearance of the prosecution witnesses. It has been further submitted that after the petitioner filed the instant petition and after noticing the contentions of the learned counsel for the petitioner qua the repeated absence of the prosecution witnesses, strangely on 05.12.2024, three prosecution witnesses chose to put in appearance and get their evidence recorded. Learned counsel submits that it is apparent that the petitioner cannot be made to suffer incarceration on account of the lackadaisical approach of the prosecution witnesses, who in the present case are all police officials. A prayer has, therefore, been made to extend the concession of bail to the petitioner, more so when eight witnesses still remain to be examined. In support of his submissions, learned counsel for the petitioner has placed reliance upon judgment of Hon'ble the Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023.***

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Sewa Singh, has not disputed the custody period of the petitioner nor has it been disputed that in the last one year, the case had to be adjourned repeatedly by the trial Court on account of the non-appearances of the prosecution witnesses. Learned counsel has, however, submitted that on the last date of hearing before the trial Court, it was the counsel for the defence, who had sought an adjournment to cross-examine the prosecution witnesses.

4. On a further query, learned State counsel has not disputed that the petitioner has no previous criminal antecedents.

5. I have heard learned counsel for the parties and perused the relevant material on record.
6. The petitioner has been in custody since 04.07.2023. The trial is unlikely to conclude in the near future.
7. Hon'ble Supreme Court in *Dheeraj Kumar Shukla's case* (*supra*) 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.”

8. 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.
9. Accordingly, the instant petition is allowed. 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.
10. 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.

December 10th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No