

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

224

2024:PHHC:009734

CRM-M-52210-2023

Date of decision: January 24, 2024

SUKHDEV RAM

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gautam Kumar, Advocate
for Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab
with SI Sukhbir.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.148 dated 14.12.2022 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dirba, District Sangrur.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been custody since 14.12.2022 in a case of false implication. It has been submitted that as per the case put up by the prosecution, the petitioner along with the co-accused Jaspal Ram were apprehended by the police while they were riding together on a motorcycle; on seeing the police party, the accused including the petitioner panicked and when they tried to take a U-turn, their motorcycle skidded, as a result of which, the contraband which was in a polythene bag, spilled on the road.

3. Learned counsel has submitted that after the challan was presented on 04.05.2023 and charges framed thereafter on 16.05.2023, only one prosecution witness out of the 16 had been examined till date. It has been further submitted that the case has been adjourned repeatedly after the charges were framed, on account of the non-appearance of the prosecution witnesses as the prosecution witnesses had failed to get their evidence recorded. Learned counsel submits that the petitioner has clean antecedents as he is not involved in any other criminal case, much less under the NDPS Act. A prayer has, therefore, been made to enlarge the petitioner on bail as in the aforementioned circumstances, the petitioner cannot be made to languish in custody for awaiting the presence of the prosecution witnesses to get their evidence recorded. It has also been submitted that in similar circumstances, co-accused Jaspal Ram had been extended the concession of bail by this Court vide order dated 05.10.2023 (Annexure P-2).

4. *Per contra*, learned State counsel, while opposing the prayer and submission made by the counsel opposite, has submitted that 1000 tablets of Tramadol Hydrochloride were recovered from a polythene bad, which had fallen on the road. The said recovery has been classified as 'commercial', however, learned State counsel, on instructions, has not been able to controvert the submissions made by the counsel for the petitioner that after the charges were framed on 16.05.2023, only one prosecution witness i.e. ASI Gurcharan Singh, who admittedly is just a formal witness, had been examined till date and on the remaining dates of hearing, the case had been adjourned on account of non-appearance of the prosecution witnesses. It has also not been disputed by the learned State counsel that the petitioner is not involved in any other criminal case, much less under the NDPS Act. He further submits that next date before

the trial Court is 16.02.2024, when some of the witnesses have been summoned to depose.

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

6. The petitioner has been in custody for more than 1 year, having been arrested on 14.12.2022, even though the challan was presented within the statutory period which was followed by prompt framing of charges on 16.05.2023, however, the trial had not been able to proceed any further on account of non-appearance of the prosecution witnesses, who in the case at hand admittedly are all the official witnesses. The petitioner in the aforementioned facts and circumstances, cannot be made to languish in custody for reasons attributable only to the prosecution.

7. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2021]*** 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.”

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.

January 24, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

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