2024:PHHC:013122

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-52807-2023
Date of decision: 31.01.2024

Kuldeep Singh .....Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.148 dated 18.12.2021 under Sections 22/29/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Sadar Rajpura, District Patiala.

2. Learned counsel for the petitioner submits that a false recovery of 48500 tablets of Tramadol was planted on the petitioner. It has been submitted that after the petitioner was apprehended on 18.12.2021, challan was presented on 02.06.2022 followed by framing of charges on 13.07.2022, however, till date the trial had not concluded on account of the irregular appearance of the prosecution witnesses before the Trial Court. Learned counsel submits that in the circumstances, the petitioner cannot be made to languish in custody for reasons attributable only to the prosecution. Learned counsel has placed reliance upon a judgment of Hon'ble Supreme Court in ***Dheeraj Kumar***

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Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023 to urge that in similar circumstances the Hon'ble Supreme Court keeping in view the long incarceration of the accused and his clean antecedents 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 HC Randhir Kumar, has not been able to dispute the status of the trial. He has also not been able to dispute that the conclusion of the trial had been delayed on account of the non-appearance of the prosecution witnesses on a number of dates. However, he submits that the recovery effected from the petitioner was huge and had been classified as commercial under the NDPS Act.

4. On a pointed query put to the learned State counsel as to whether the petitioner has any criminal antecedents, he has placed on record his custody certificate wherein it stands reflected that the petitioner is not involved in any other criminal case much less under the NDPS Act.

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

6. The petitioner has been in custody since 18.12.2021. The petitioner, as also not disputed by the learned State counsel, is not involved in any other case under the NDPS Act. The trial is unlikely to conclude in the near future.

7. Hon’ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on***

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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. 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.

10. 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.

31.01.2024 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

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

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