



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-54595-2023

Date of decision: 05.09.2024

Mala Ram

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

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.233 dated 21.09.2022 under Sections 22(C), 15(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Lambi, District Sri Muktsar Sahib.

2. Learned counsel for the petitioner submits that even though the petitioner was arrested way back on 21.09.2022, and challan was presented on 17.03.2023, however, till date only 01 prosecution witness out of the 27 cited, had been examined, and that too on account of repeated non-appearance of the prosecution witnesses, who in the present case are police officials. Learned counsel has submitted that in the circumstances, it is evident that the trial has come to a virtual standstill not on account of any fault of the petitioner but only for reasons attributable to the prosecution and prosecution alone. It has also



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been submitted by the learned counsel that a false recovery of 416 grams of Tramadol along with 10 kgs of poppy husk has been planted upon him, which was allegedly recovered from the tool box of the truck on which he was employed as a driver.

3. On a pointed query put to the learned counsel for the petitioner as to whether the petitioner is involved in any other criminal case, he has categorically replied in the negative. It has furthermore been brought to the notice of this Court that co-accused Bhagwan Ram has also been extended the concession of bail on account of inordinate delay in the conclusion of the trial. Learned counsel has prayed that in the aforementioned facts and circumstances, the petitioner also deserves a similar relief.

4. Per contra, learned State counsel while vehemently opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from ASI Dharampal, has submitted that the petitioner was nabbed on suspicion and thereafter the aforementioned recovery was effected from the tool box of the truck on which he was working as a driver; the recovery effected has been classified as 'commercial' under the NDPS Act and hence, he does not deserve to be extended the concession of bail. However, it has not been disputed that co-accused Bhagwan Ram has been granted the concession of bail by this Court. It has also not been controverted by the learned State counsel that on most of the dates before the learned Trial Court the case had to be adjourned on account of the absence of the prosecution witnesses, who failed to get their evidence recorded despite being



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summoned for those dates.

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

6. The petitioner has been in custody since 21.09.2022. Charges in the present case as per learned State counsel were framed in October, 2023, however, it is a matter of record that even after 11 months of framing of charges, only 01 prosecution witness out of the 27 has been examined. The petitioner is not involved in any other case under the NDPS Act. 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 appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act. 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

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concession of bail granted to him, the State would be at liberty to seek
cancellation of the same.

05.09.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No