



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

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**CRM-M-57481-2022 (O&M)
Date of decision: 13.05.2024**

Lakhwinder Singh alias Mona

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Bhavyadeep Walia, Advocate
for the petitioner.

Mr. Navdeep Singh, 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.83 dated 30.06.2022 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Badhni Kalan, District Moga.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on account of some animosity which the police was nursing against him; furthermore, as per allegations levelled in the FIR, on seeing the police party the petitioner threw a polythene bag containing 1200 tablets of Tramadol (554 grams) on the ground. Learned counsel submits that in the circumstances, it was a debatable issue as to whether the petitioner could be deemed to be in conscious possession of the recovered



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contraband. Learned counsel has further submitted that the petitioner has now been in custody since 30.06.2022; even though challan was presented way back on 25.11.2022, till date only 03 prosecution witnesses out of the 11 cited, had been examined, hence, he could not be made to languish in custody for an indefinite time as it was also a matter of record that prosecution witnesses had not been appearing regularly before the learned Trial Court to get their evidence recorded. Learned counsel has further submitted that the petitioner has clean antecedents as he is not involved in any other case under the NDPS Act which further lends credence to his false implication in the present case.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from SI Dharamvir Singh, has not disputed the stage/status of the trial. He has, however, submitted that it was pursuant to a secret information received, the petitioner was nabbed by the investigating agency; on seeing the police party the petitioner threw away the contraband which he was carrying on his person. Learned State counsel on further instructions has not disputed that the petitioner is not involved in any other case under the NDPS Act.

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

5. The petitioner has now been in custody since 30.06.2022. Admittedly, he is not involved in any other case under the NDPS Act and 08 prosecution witnesses still remain to be examined, hence, possibility of the trial concluding in the near future looks remote. No



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doubt, the recovery effected from the petitioner has been classified as commercial under the NDPS Act, however, Hon'ble 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.”

6. 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.

7. 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. Pending applications, if any, stand disposed of.

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.

13.05.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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