



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CRM-M-53406-2024

Date of decision: November 4th, 2024

Sagar @ Chinna

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vishal Sharda, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, Assistant Advocate General,
Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This is a third petition filed by the petitioner seeking the concession of regular bail under Section 439 of the Code of Criminal Procedure, 1973 in FIR No.90 dated 15.02.2023 under Sections 21(c), 29 of the NDPS Act, registered at Police Station Rania, District Sirsa.

2. Learned counsel for the petitioner submits that the petitioner was allegedly intercepted on the basis of suspicion while he was travelling in a car; a recovery of 259 grams of heroin, just marginally higher than the quantity classified as commercial under the NDPS Act, was then alleged to have been affected from a black polythene bag, which was lying in the car. Learned counsel has argued that firstly the car in question did not belong to the petitioner. It has been further submitted that the petitioner's false implication in the present case is evident from the fact that he has never been previously booked in any other case under the NDPS Act.

It has also been argued by the learned counsel that after the petitioner was



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arrested on 15.02.2023, challan was presented on 30.11.2023 followed by framing of charges on 05.12.2023, however, till date none of the 17 witnesses cited by the prosecution had been examined as it is a matter of record that on each and every date of hearing, the case was being adjourned by the learned trial Court on account of the repeated non-appearances of the prosecution witnesses. In support, learned counsel has drawn the attention of this Court to the zimni orders, which have been annexed as Annexure P-4, wherein the factum of repeated non-appearances of the prosecution witnesses, despite the issuance of bailable warrants, stands reflected. A prayer has, therefore, been made by the learned counsel for extending the concession of bail to the petitioner as he cannot be made to languish in jail for reasons not attributable to him but to the prosecution alone. Learned counsel has also placed reliance upon *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023*, wherein Hon'ble the Supreme Court had extended the concession of bail to accused on account of his long incarceration and also on account of the irregular appearances of the prosecution witnesses to get their evidence recorded.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed the custody period of the petitioner as well as the status of the trial, however, it has been argued by learned State counsel, on instructions, that the petitioner while travelling in a car, was directed by police party to stop, however, on being asked to stop, the petitioner tried to flee



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away from the spot; when he was chased by the police, the petitioner fell down, as a result of which he fractured his foot and it was then that he was apprehended at the spot. Thereafter, the car in which the petitioner was travelling, was searched after due compliance of Section 50 and a recovery of 259 grams of heroin was effected from a black bag, which was lying in the car. Learned State counsel, on instructions, has not disputed that the petitioner has not been booked in any other case under the NDPS Act. The contents of the zimni orders, which have been annexed as Annexure P-4, have also not been disputed by the learned State counsel, on instructions.

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

5. In the present case, as not disputed, the prosecution witnesses, who are all police officials, have been absenting themselves before the trial Court to get their evidence recorded. There is thus no likelihood of the trial concluding in the near future.

6. 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.”



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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.

8. 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.

9. 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.

November 4th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No