



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

295

CRM-M-53603-2024 (O&M)

Date of decision: 06.11.2024

Pappu Sahni @ Sahani

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (third) petition is seeking the concession of bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in case FIR No.402 dated 21.10.2022 under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Parao, Ambala Cantt. (Ambala).

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case which is evident from that fact that he has no previous criminal antecedents, much less ever been booked for an offence under the NDPS Act. It has also been submitted that the alleged recovery of 2 kgs 600 grams of opium is just marginally higher than the minimum classified as 'commercial' under the NDPS Act. Learned counsel has further argued that even though the petitioner has now been in custody for more than



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two years having been arrested on 21.10.2022, followed by presentation of challan on 31.03.2023 and the charges being framed on 19.08.2023, yet only 01 prosecution witness out of the 17 cited has been examined till date, hence, the petitioner cannot be made to languish in custody, moreso when the trial has failed to make any progress only on account of the repeated non-appearances of prosecution witnesses who in the present case are all police officials. In support, learned counsel has also placed reliance upon *Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]*, wherein Hon'ble the Supreme Court in almost identical circumstances had extended the concession of bail to the accused on account of inordinate delay in the conclusion of the trial even though the recovery effected had been classified as 'commercial' in the said case; Hon'ble the Supreme Court had dispensed with the conditions of Section 37 of the NDPS Act.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from SI Pawan Kumar, has not disputed the custody period of the petitioner as well as the stage of trial. The contents of the zimni orders, which have been placed on record by the learned counsel for the petitioner today in the Court, have also not been disputed by the learned State counsel on instructions. However, it has been asserted by the learned State counsel that a secret information was received qua the involvement of the petitioner in drug trafficking and the recovery effected from the petitioner has been classified as 'commercial' under the NDPS Act.

4. I have heard learned counsel for the parties and perused the



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material placed on record.

5. The petitioner has been languishing in custody since 21.10.2022 and a perusal of the zimni orders which have been placed on record by learned counsel for the petitioner today, reveals that the case has been adjourned repeatedly by the learned Trial Court on account of the non-appearances of the prosecution witnesses. No doubt, the recovery effected from the petitioner has been classified as 'commercial' under the NDPS Act, however, the petitioner cannot be made to languish in custody to await the appearances of the prosecution witnesses, who as already observed in the present case, are police officials. The trial is unlikely to conclude in the near future on account of the lackadaisical attitude of the prosecution witnesses. 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.”

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.



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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.

7. 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.

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

06.11.2024

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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