

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

228

2024:PHHC:035911

CRM-M-63555-2023

Date of decision: March 13th, 2024

Jasbir Kaur @ Sweety

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Shaveta Sanghi and Mr. Aditya Sanghi, Advocates
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.87 dated 04.06.2020 under Sections 21, 22 of the NDPS Act, 1985 registered at Police Station Phase 1, S.A.S. Nagar.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 04.06.2020 and it is a matter of record that on as many as 35 dates of hearing before the trial Court, the case had to be adjourned on account of the non-appearance of the prosecution witnesses, who in the instant case are all officials. Learned counsel submits that even otherwise, it is a case of false implication, which is evident from certain glaring and material discrepancies with respect to the timeline and the place from where the petitioner was allegedly nabbed along with the recovered contraband. Learned counsel has submitted that in the circumstances, the petitioner cannot be made to languish in custody for reasons not attributable to the petitioner but to the prosecution.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed that the prosecution witnesses had been continuously absenting themselves during the course of the trial, as a result of which the conclusion of the trial had indeed been delayed. However, it has been submitted, on instructions from S.I. Satwinder Singh, that on the last date of hearing, two witnesses including the D.S.P., in whose presence the alleged recovery was effected, have been examined. Learned State counsel has further submitted that the next date fixed before the trial Court is 05.04.2024 when some more witnesses out of the remaining ten are likely to be examined. Learned State counsel has, however, submitted that the recovery i.e. 500 grams of heroin effected from the petitioner is much above than the minimum classified under the NDPS Act.

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

5. The petitioner has been in custody since 04.06.2020. The trial is unlikely to conclude in the near future.

6. 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.”

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.

March 13th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No