

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

236/1

2024:PHHC:023520

CRM-M-65449-2023

Date of decision: February 20, 2024

MAINGAL SINGH @ MAINGI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Harpreet Kaur Maini, Advocate
for the petitioner.

Mr. Navdeep Singh, Deputy Advocate General, Punjab
with ASI Harvinder Singh.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.148 dated 17.08.2021 (Annexure P-1) under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Nihal Singh Wala, District Moga.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been in custody for almost 2 years and 6 months, having been arrested on 17.08.2021 and till date, the trial has not concluded on account of the continuous non-appearance of the prosecution witnesses before the learned trial Court. It has been further submitted that even though the challan was presented two years back on 10.02.2022 followed by the framing of charges on 14.02.2022, however, only 1 witness out of the 12 cited by the prosecution had been examined and that too, partially. Learned counsel has, thus, asserted that in the aforementioned circumstances, the petitioner cannot be made to languish in

custody for reasons attributable to the prosecution alone as it would amount to his liberty being compromised under Article 21 of the Constitution of India.

3. *Per contra*, learned State counsel, while opposing the prayer and submissions made by the learned counsel for the petitioner, on instructions, has not been able to dispute that the trial has come to a virtual standstill after the charges were framed on 14.03.2022. He has further submitted that the next date fixed before the learned trial Court is 15.04.2024, when some prosecution witnesses are likely to be examined.

4. On a pointed query put to the learned State counsel, he has not disputed that all the witnesses in the case in hand are official witnesses. It has also not been disputed, on instructions, that the delay in the trial has not been on account of any reasons attributable to the petitioner. On a further query put to the learned State counsel as to whether the petitioner is involved in any other criminal case, he, on instructions, has replied in the negative. He, however, submits that the petitioner was nabbed on the basis of secret information and a recovery of 2000 tablets of Tramadol was effected from him.

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

6. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2021]*** 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 add here, in case the petitioner is found misusing the concession of bail, the State would be at liberty to approach this Court to seek cancellation of bail to him.

February 20, 2024
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No