

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

222

2024:PHHC:006524

CRM-M-141-2024

Date of decision: January 18th, 2024

Binder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sukhwinder S. Dhillon, Advocate
for the petitioner.

Mr. Mohit Kapoor, Additional 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.120 dated 03.08.2021 under Section 22(c), 29 of the NDPS Act, 1985, registered at Police Station STF, District S.A.S. Nagar.

2. Learned counsel for the petitioner at the outset has drawn the attention of this Court to the zimni orders, which have been placed on record today. He submits that a perusal of the zimni orders clearly reveals that the trial has been delayed on account of the prosecution witnesses not appearing regularly before the trial Court to get their evidence recorded despite the fact that on a few dates,ailable warrants were also issued to secure their presence. It has been further submitted that after the charges were framed on 13.05.2022, only four prosecution witnesses out of the 19 had been examined and in the aforementioned facts and circumstances, there was no possibility of the trial concluding in the near future. A prayer has, therefore, been made to extend the concession of bail to the petitioner as he cannot be

made to languish in custody for reasons attributable to the prosecution and prosecution alone.

3. On a pointed query put to the learned counsel as to whether the petitioner has any criminal antecedents, he has replied in the negative.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that a recovery of 4000 tablets of tramadol was effected from the petitioner when he was nabbed on suspicion. Learned State counsel has submitted that no doubt, only four prosecution witnesses have been examined till date, however, there is every likelihood that the remaining prosecution witnesses would be examined without any further delay in the future. Learned State counsel, on instructions, has not controverted the submissions made by the counsel opposite with respect to the petitioner not being involved in any other criminal case much less under the NDPS Act.

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

6. The petitioner has been in custody since 03.08.2021. The trial is unlikely to conclude in the near future.

7. 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.”

8. 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.
9. 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.
10. 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.

January 18th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No