

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

107+219

CRM-M-557-2024 (O&M)
Date of decision: 01.05.2024

Baldev Raj @ Debu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Piyush Sharma, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-18797-2024

For the reasons mentioned in the application, the same is allowed and copies of zimni orders of the learned Trial Court from 24.07.2023 onwards are taken on record as Annexure P-5 (collectively), subject to all just exceptions.

CRM-M-557-2024

1. The petitioner in the instant (third) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.132 dated 24.08.2021 under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Bhikhi, District Mansa.

2. Learned counsel for the petitioner has drawn the attention of this Court to the zimni orders placed on record today and reiterated that a perusal of the same clearly reveals that the conclusion of the trial has been delayed on account of reasons attributable to the prosecution

and prosecution alone. Learned counsel has submitted that despiteailable warrants having been issued on a number of dates to secure the presence of the prosecution witnesses, they had failed to appear to get their evidence recorded. It has also been submitted that on a few dates the petitioner was not produced in the Court by the jail authorities. Learned counsel has, thus, contended that in the circumstances and keeping in view the fact that he had been arraigned as an accused only on the basis of a disclosure statement allegedly suffered by the co-accused from whom the recoveries of contraband had been effected along with drug money, the petitioner could not be made to languish in custody for no fault of his. In support of his submissions, learned counsel has referred to ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP(Crl.) No.6690/2022) decided on 25.01.2023*** wherein on account of the long incarceration of an accused in NDPS cases, rigors of Section 37 of the NDPS Act were dispensed with. Learned counsel has submitted that it is a matter of record that as on date only 01 witness out of the 29 cited has been examined and hence, likelihood of the trial concluding in the near future is impossible.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions from ASI Nachattar Singh, has not been able to dispute the contents of the zimni orders which have been placed on record today. It has also not been disputed by the learned State counsel that the co-accused from whom recoveries were effected, have already been extended the concession of bail; still further it has not been controverted by the learned State counsel, on instructions, that the petitioner came to be nominated on the

basis of a disclosure statement allegedly suffered by the co-accused from whom the recoveries of the contraband were effected. However, learned State counsel while drawing the attention of this Court to the custody certificate of the petitioner has submitted that the petitioner has been previously involved in one case under the Excise Act and two cases under the NDPS Act. However, on a pointed query put to the learned State counsel as to the stage of the trial and as to whether only 01 prosecution witness has been examined as has been argued by learned counsel for the petitioner, he, on instructions, has replied in the affirmative. Though learned State counsel has disputed that no recovery of any contraband was effected from petitioner, however, learned counsel for the petitioner has rebutted the instructions which have been received by the learned State counsel by reiterating that no recovery much less of any contraband or drug money had been effected from the petitioner, rather, the recoveries had been effected from a Scorpio vehicle of co-accused Gurbinder Singh, and allegedly the petitioner was just standing outside his house when the alleged recoveries were effected from the above mentioned vehicle.

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

5. The petitioner has been in custody for more than three and a half years having been arrested on 25.08.2021. He has been arraigned as an accused on the basis of a disclosure statement allegations suffered by co-accused Bhajan Kaur, who nominated co-accused Narinder from whom a recovery of 20 grams of heroin was effected; thereafter co-accused Narinder suffered a disclosure statement wherein he nominated

the petitioner and co-accused Gurbinder Singh as accused and stated that they were suppliers of the contraband. Even as per the challan, recoveries were effected from the vehicle which belonged to co-accused Gurbinder Singh. The trial has come to a virtual standstill on account of reasons not attributable to the petitioner but due to the repeated absence of prosecution witnesses before the learned Trial Court. Hence, there is no likelihood of the trial concluding 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. 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.

9. 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.

01.05.2024
Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No