



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

246

CRM-M-1631-2025

Date of decision: 20.01.2025

Om Parkash

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. D.N. Ganeriwal, Advocate for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.2 dated 06.01.2023 under Sections 15C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Khuian Sarwar, District Fazilka.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 06.01.2023 after he was allegedly apprehended with 24 bags of poppy husk, pursuant to a secret information received qua his involvement in drug trafficking. Learned counsel has argued that as per FSL report only 02 out of the 24 bags sent to FSL were found to contain poppy husk. It has been, therefore, argued that in the circumstances, the alleged recovery (17 kgs of poppy husk in each bag) would be less than the minimum classified as 'commercial' under the NDPS Act. It has been further submitted by the



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learned counsel that even though challan was presented on 15.05.2023 followed by framing of charges on 17.08.2023, however, the trial had not concluded yet since as on date only 02 prosecution witnesses out of the 14, cited had been examined. While placing on record the copies of zimni orders of the learned Trial Court in the Court today, it has been further contended by the learned counsel that a perusal of the zimni orders reveals that the trial has been delayed on account of reasons not attributable to the petitioner but to the prosecution; despite issuance of bailable and non-bailable warrants of arrest to secure the presence of the prosecution witnesses, who in the present case are police officials, they have been continuously not appearing before the learned Trial Court to get their evidence recorded. Learned counsel, therefore, prays that the petitioner be enlarged on bail as it compromised with his constitutional right to a speedy trial. In support, learned counsel has placed reliance upon ***Rabi Prakash Vs. The State of Odisha : 2023 LiveLaw (SC) 533*** and ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh [SLP(Crl.) No.6690/2022]***, wherein Hon'ble the Apex 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 cases; Hon'ble the Apex Court had dispensed with the conditions of Section 37 of the NDPS Act in the said cases.

3. Per contra, learned State counsel while opposing the prayer made by learned counsel for the petitioner, on instructions, has not disputed the custody period of the petitioner as well as the stage of trial.

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However, it has been submitted that the total recovery effected from the petitioner was 408 kgs of poppy husk which had been packed into 24 bags; learned State counsel, on further instructions, has however, not disputed the submissions made by the counsel opposite qua the report received from the FSL also.

4. Be that as it may, without commenting upon the merits of the case and the report received from the FSL with respect to the contents of the case property sent in the present case, this Court deems it fit to extend the concession of bail to the petitioner in view of his long incarceration coupled with the fact that the prosecution witnesses despite issuance ofailable and non-ailable warrants have not been presenting themselves before the learned Trial Court to get their evidence recorded after the charges were framed on 17.08.2023.

5. 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.

6. 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.

20.01.2025

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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