

2025:PHHC:046945



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

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CRM-M-17474-2025

Date of decision: April 04, 2025

SANTOSH KUMAR ARYA

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Kamlesh, Advocate
for the petitioner.

Mr. Shiva Khurmi, AA, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition is the third petition filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.114 dated 17.08.2021 (Annexure P-1) under Sections 22 and 29 of the NDPS Act, 1985, registered at Police Station City-1 Malerkotla, District Malerkotla.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 26.04.2023. Despite the fact that the challan was presented as far back on 19.10.2023 and charges were framed on 17.11.2023, not a single prosecution witness has been examined to date. It is contended that the delay in the trial is solely attributable to the inaction by the prosecution rather than any conduct of the petitioner. Given his long incarceration and the failure of the prosecution to proceed expeditiously, the petitioner, who as per the learned counsel, has been falsely implicated in the present case, deserve the concession of bail.



3. Learned counsel for the petitioner has drawn the attention of this Court to the zimni orders of the learned trial Court annexed as Annexure P-5, which reflect that since the framing of the charges on 17.11.2023, the prosecution witnesses have consistently failed to appear before the learned trial Court. Additionally, the jail authorities have not ensured the continuous production of the petitioner before the learned trial Court. It is submitted that the responsibility of producing the accused at every hearing rests with the jail authorities, and in such circumstances, the petitioner cannot be made to languish in custody indefinitely, particularly when he has no previous criminal antecedents, much less any previous involvement in cases under the NDPS Act.

4. It is further contended by the learned counsel for the petitioner that even otherwise, the case of the prosecution is devoid of any substantive evidence against the petitioner. The consignment of intoxicant tablets in question was allegedly couriered by M/s J.K. Pharmaceuticals from Varanasi to M/s Shyama Pharmaceuticals, Malerkotla. However, learned counsel has asserted that the petitioner has no concern with M/s J.K. Pharmaceuticals. While he is a licensed vendor under the Drugs and Cosmetics Act, 1940, the consignment was not dispatched by him. His implication in the present case arises solely from the fact that the sender's address mentioned in the courier was that of M/s J.K. Pharmaceuticals/M/s Arya Pharmaceuticals, the latter being a firm owned by the petitioner.



5. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***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 bail was granted due to the prolonged incarceration of the accused in NDPS case and the prosecution's failure to conclude the trial, despite the recovery in those cases, being of 'commercial' quantity under the NDPS Act. It is contended that in light of these precedents, the bar under Section 37 of the NDPS Act should not stand in the way of granting bail to the petitioner.

6. *Per contra*, learned State counsel, on instructions, has not disputed the custody period of the petitioner, the stage of the trial or the contents of the zimni orders, which have been annexed as Annexure P-5. However, it is submitted by the learned State counsel that the courier received from Varanasi contained a large consignment of intoxicant tablets, which was explicitly addressed as being sent by M/s J.K. Pharmaceuticals/M/s Arya Pharmaceuticals to M/s Shyama Pharmaceuticals, Malerkotla. Given that the petitioner is the proprietor of M/s Arya Pharmaceuticals, it is contended by the learned State counsel that he can be reasonably inferred to be the sender.

7. Upon a specific query by this Court as to whether the petitioner has any prior involvement in cases under the NDPS Act, learned State counsel has replied in the negative.



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

9. The petitioner has been in custody for nearly two years, having been arrested on 26.04.2023. The trial has remained at a virtual standstill after the framing of charges on 17.11.2023. As conceded by the State on instructions, not a single prosecution witness out of 21 has been examined. The zimni orders annexed with the petition categorically reflect that the delay is entirely due to the prosecution's lackadaisical approach.

10. While the quantity of the contraband recovered is significant, the Hon'ble Supreme Court in similar circumstances in ***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]***, has held that prolonged incarceration and delay trial due to the fault of the prosecution may warrant bail, notwithstanding the bar under Section 37 of the NDPS Act. In the present case, the right of the petitioner to a speedy and fair trial has been gravely compromised.

11. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to allow the instant petition, and extend the concession of regular bail to the petitioner.

12. The petition as such is allowed, and the petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, the learned trial Court may impose any such stringent conditions as it deems fit to ensure the appearance of the petitioner during each and every hearing of



the trial including furnishing of two local sureties. 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.

13. 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.

April 04, 2025
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*