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

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CRM-M-32721-2024
Date of decision: 24.03.2025

Gurjant Singh .....Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab assisted by
DSP Lakhwinder Singh and
Inspector Amandeep Singh.

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MANJARI NEHRU KAUL, J. (ORAL)

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.158 dated 31.08.2022 under Sections 21, 27A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Gharinda, Amritsar (Rural).

2. On the last date of hearing the following order was passed:-

> *"Learned counsel for the petitioner submits that the petitioner has been languishing in custody since 31.08.2022 in a case of false implication. Despite the charges having been framed way back on 30.05.2023, till date only one prosecution witness has been completely examined, two witnesses have been partly examined and thereafter despite issuance of bailable warrants on ten dates and issuance of non-bailable warrants on two different dates, the prosecution witnesses, who in the present case are all police officials, have not bothered to appear before the trial Court to get their evidence*

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recorded. Learned counsel, therefore, submits that in the circumstances, the petitioner's right to a speedy and fair trial is being compromised and he deserves to be extended the concession of bail.

Learned State counsel while opposing the prayer and submissions made by the counsel opposite has not disputed that the petitioner has been in custody since 31.08.2022, only one prosecution witness has been completed examined, with two having been partly examined. Learned counsel for the State, on instructions, has also not been able to dispute that despite the issuance of bailable warrants and non-bailable warrants on multiple occasions, the prosecution witnesses, who are all police officials in the present case have been absenting themselves. However, it has been submitted that a huge recovery of two kilograms of heroin in total (1 kilogram each from the petitioner and the co-accused) was effected following a specific secret information received by the police. The alleged recovery was effected after due compliance of all the mandatory provisions of the NDPS Act. In addition, it has been submitted that a huge recovery of drug money amounting to ₹4,90,000/- was also made from the accused including the petitioner.

In the present case, it is undisputed and a matter of record that despite the issuance of multiple bailable and non-bailable warrants by the learned trial Court, the prosecution witnesses, who are all police officials, have repeatedly failed to appear. Consequently, the trial has not concluded, compelling the accused/petitioner to seek bail before this Court on the ground of prolonged incarceration, which is attributable to the prosecution's inaction rather than any conduct on the part of the accused/petitioner.

It is deeply concerning that the persistent non-appearance of prosecution witnesses has become a recurring issue, particularly in cases under the NDPS Act. This has led to significant delays in trials, forcing numerous accused persons to seek bail, even in cases where they were apprehended with contraband far exceeding the threshold for commercial quantity under the NDPS Act. Time and again, this Court has had to summon affidavits from the police and the State and has even reprimanded the authorities for their failure to ensure the timely conclusion of trials in NDPS cases due to the repeated absence of prosecution witnesses. Despite repeated assurances from senior officials, including the Director General of Police, Punjab, that necessary directions have been issued and action would be taken

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against delinquent witnesses, who, in cases under the NDPS Act, are invariably police officials, there is no visible implementation on the ground. The directives appear to remain confined to official correspondence, with no tangible results.

This region is grappling with a severe drug menace. Yet, due to either gross negligence or for reasons that are evident, Courts are left with no option, but to grant bail to such accused owing to their prolonged incarceration and inordinate delays in trial. The failure of the prosecution to produce its witnesses, not only obstructs justice, but also compels Courts to uphold the fundamental right of the accused to a fair and speedy trial, as guaranteed under the Constitution.

Let the Director General of Police, Punjab, file a response detailing the measures taken against such erring police officials, who have been cited as prosecution witnesses in cases registered under the NDPS Act, with specific reference to the present case and the stance of the State on their repeated non-appearance."

3. In compliance with the order passed by this Court, the State has filed affidavit of the Director General of Police, Punjab, which is taken on record subject to all just exceptions. A copy of the same has been supplied to the counsel opposite.

4. In his reply, the DGP has not controverted the custody period of the petitioner nor has it been disputed that despite issuance of bailable and non-bailable warrants on multiple occasions, the prosecution witnesses had not appeared to get their evidence recorded. As per the affidavit filed, departmental proceedings have been initiated against the delinquent police officials, cited as prosecution witnesses in the FIR in question.

5. In addition, learned State counsel has reiterated the gravity of the allegations levelled against the petitioner, who along with the co-

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accused, was intercepted pursuant to a specific secret information qua his involvement in drug trafficking. It has been asserted by the learned State counsel that on being arrested a huge recovery of 02 kgs of heroin was effected from the petitioner and the co-accused, who were travelling together in the same car; the petitioner was driving the car when he was nabbed by the police. It has been submitted that the alleged recovery was effected from the petitioner and the co-accused after due compliance of the mandatory provisions of the NDPS Act and hence, there is no question of the petitioner being falsely implicated. It has also been asserted by the learned State counsel that the recovered contraband is multiple times more than the minimum classified as 'commercial' under the NDPS Act. Learned State counsel has submitted that after the registration of the FIR in question, the petitioner has been booked in two other cases under the NDPS Act and one case under the Prisons Act. Learned State counsel has also submitted that an application had been moved by the prosecution before the learned Trial Court seeking to summon all the prosecution witnesses, however, it is the defence which had opposed the said application moved by the prosecution and it was on the prayer of the defence counsel that the case was adjourned for cross examination of the prosecution witness and now the case stands adjourned to 18.04.2025. Learned State counsel has submitted that in the circumstances, the petitioner cannot put the entire blame on the prosecution, as the opposition for getting all the witnesses examined, has been on the part of the defence alone.

6. I have heard learned counsel for the parties and perused the

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material placed on record.

7. The petitioner was allegedly nabbed following a secret information and thereafter a huge recovery much more than the threshold prescribed under the NDPS Act, was made from him (01 kg each heroin from both the accused, including the petitioner). The next date fixed of hearing before the learned Trial Court is 18.04.2025. Learned counsel for the petitioner, however, has refuted the instructions received by the learned State counsel regarding opposition by the defence to the summoning of all the prosecution witnesses on the next date of hearing. Learned counsel for the petitioner has also refuted the involvement of the petitioner in multiple criminal cases and has instead submitted that the petitioner is facing trial in only one other case under the NDPS Act, besides the present one. However, learned counsel for the petitioner has not been able to dispute that the case was adjourned for 18.04.2025 for the cross examination of the prosecution witnesses on the request of the defence counsel itself.

8. Be that as it may, this Court does not deem it fit to extend the concession of bail to the petitioner in the present case in view of the huge recovery effected from the petitioner, including drug money running into lakhs of rupees. The instant petition stands dismissed accordingly.

9. 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. However, in view of the petitioner's long incarceration

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since 31.08.2022, the learned Trial Court would make earnest efforts to expedite the trial and conclude it at the earliest, preferably within next four months.

24.03.2025 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

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

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