



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

225

CRM-M-51750-2024

Date of decision: May 6th, 2025

Dilbagh Singh @ Bagga

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.S. Gill, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is the third petition filed by the petitioner seeking the concession of regular bail in FIR No.66 dated 31.08.2022 registered under Section 22 of the NDPS Act, 1985, at Police Station Kheri Gandian, District Patiala.

2. Learned counsel for the petitioner submits that the petitioner has been in custody since 31.08.2022 after he was allegedly found in possession of 800 loose tablets of Tramadol. It has been argued by the learned counsel that no secret information was received qua the involvement of the petitioner in drug trafficking and instead, the petitioner, as per the case of the prosecution, was nabbed on suspicion. Learned counsel has submitted that after the challan was presented on 12.12.2022, charges were framed on 23.05.2023, however, till date the trial had not concluded primarily on account of the repeated absence/irregular appearance of the prosecution witnesses, who in the

present case are all police officials. In support, learned counsel has drawn the attention of this Court to the zimni orders, which have been annexed along with the petition as Annexure P-3. Learned counsel has submitted that in almost identical facts and circumstances, 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]*, had extended the concession of bail to the accused even though the recovery effected had been classified as 'commercial' in the said cases.

3. On a pointed query put to the learned counsel as to whether the petitioner has any previous criminal antecedents, he submits that although the petitioner was indeed booked in one other case under the NDPS Act, however, he had since been acquitted by the learned trial Court on 12.03.2024.

4. *Per contra*, learned State counsel, while opposing the prayer and submissions made by counsel opposite, has not disputed the custody period of the petitioner nor has he, on instructions, disputed the contents of the zimni orders, which have been appended along with the petition. Learned State counsel, on further instructions, has also not contested that the evidence has still not concluded. However, he submits that six prosecution witnesses have already been examined, which leaves only four more witnesses to be examined. It has also been submitted by the learned State counsel that the recovery effected from the petitioner has been classified as commercial under the NDPS Act.

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

6. The petitioner has been in custody for almost three years having been arrested on 31.08.2022; the trial has been unduly prolonged on account of the repeated absence of the prosecution witnesses, who failed to turn up before the trial Court despite issuance of bailable/non-bailable warrants. The petitioner, therefore, cannot be made to languish in custody for an indefinite period of time to await the appearance of the prosecution witnesses.

7. Hon'ble Supreme Court in *Dheeraj Kumar Shukla's case (supra)* 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 and the 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.

May 6th, 2025

Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No