

2025:PHHC:017752



227.

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

CRM-M-12365-2024 (O&M)

Date of decision: 06.02.2025

Rahul Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ritesh Pandey, Advocate, for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of regular bail, filed under Section 439 of Cr.P.C., in case FIR No.181, dated 02.09.2021, under Sections 22/29 of NDPS Act, 1985, registered at Police Station Civil Line, Batala, District Gurdaspur.

Learned counsel for the petitioner submits that the petitioner has been languishing in custody since 08.08.2023 and till date, only 02 prosecution witnesses out of 11 cited have been examined. In support, learned counsel has placed on record a photocopy of the zimni orders of the trial Court. By drawing the attention of this Court to the zimni orders, learned counsel has asserted that a perusal of the same reveals that the prosecution witnesses have been absenting themselves on most of the dates of hearing, even though on a couple of dates, the prosecution witnesses had been bound down by the trial Court. Learned counsel, while placing

reliance upon *Dheeraj Kumar Shukla Versus State of Uttar Pradesh (SLP(Crl.) No.6690/2022)*, decided on 25.01.2023 and *Rabi Prakash Versus The State of Odisha, 2023 Livelaw (SC) 533*, has submitted that in almost identical circumstances, the Hon'ble Supreme Court had done away with the bar created under Section 37 of the NDPS Act and extended the concession of bail to the accused therein on account of their long incarceration and the trial being delayed for reasons not attributable to the accused.

Per contra, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, has not disputed the custody period of the petitioner nor has it been disputed, on instructions, that, as on date, only 02 prosecution witnesses have been examined. Learned State counsel, on instructions, has also not disputed the contents of the zimni orders which have been placed on record by the learned counsel for the petitioner. However, learned State counsel submits that when the petitioner was intercepted on suspicion by the police, a huge recovery of 500 tablets containing tramadol and 3000 tablets containing Alprazolam was made from the petitioner which falls under commercial quantity of the NDPS Act.

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

The petitioner has been languishing in custody since 08.08.2023. It is a matter of record that the trial has been delayed on account of irregular appearances of the prosecution witnesses, who, in the

present case, are all police officials. Therefore, the petitioner cannot be held responsible for the delay in the trial and rather his right to a speedy trial has been compromised on account of repeated absence of the prosecution witnesses.

In *Rabi Prakash (supra)* and *Dheeraj Kumar Shukla (supra)*, the Hon'ble Supreme Court, on account of inordinate delay in the conclusion of trial, had done away with the bar created under Section 37 of the NDPS Act and enlarged the accused therein on bail.

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.

Accordingly, the instant petition is allowed and 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.

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.

(MANJARI NEHRU KAUL)
JUDGE

February 06, 2025
sanjeev

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