



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CRM-M No.19327 of 2024

DATE OF DECISION :20th FEBRUARY, 2025

Sukhwinder Singh @ Gaggi

.... Petitioner

Versus

State of Punjab

.... Respondent

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CRM-M- No.47611 of 2024

Gurmeet Singh @ Shinda

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

* * * *

Present : Mr. P. S. Sekhon, Advocate for the petitioner(s).

Mr. Navdeep Singh, DAG, Punjab.

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MANJARI NEHRU KAUL, J. (Oral)

The petitioners, in both the petitioners, detailed hereinabove, are seeking the concession of regular bail under Section 439 Cr.P.C. in case FIR No.31 dated 08.03.2023 under Section 21/29/31 (Act No.61) of NDPS Act, 1985 registered at Police Station City Dhuri, District Sangrur.

2. Since both these petitions have arisen out of the same FIR, they are being taken up together for disposal by this common order and the facts are being taken from CRM-M-19327-2024.



3. Learned counsel for the petitioners has reiterated the following submissions made on the previous date of hearing:

“Learned counsel for the petitioners submits that allegedly the petitioners were intercepted by the police pursuant to a secret information received qua their involvement in drug trafficking. It has been contended by the learned counsel that petitioner-Sukhwinder Singh, who was driving the car, from which the contraband was recovered, does not even have any previous criminal antecedents, which clearly hints towards his false implication in the present case. It has been further submitted that the recovery allegedly effected (270 grams of heroin) from the car was from a bag lying next to the gearbox. It has been contended that although petitioner-Gurmeet Singh was also alleged to be present in the car at the time of the alleged recovery, however, said petitioner-Gurmeet Singh was not even the registered owner of the vehicle in question, which also hinted towards his false implication in the present case. Learned counsel has further submitted that the alleged recovery was not even effected in the presence of any Gazetted Officer, which further lends credence to the innocence of both the petitioners. Learned counsel for the petitioners has placed on record a true copy of the zimni orders of the trial Court and submitted that a perusal of the same reveal that after the charges in the present case were framed on 07.11.2023, the trial had been proceeding at a very slow pace primarily on account of the repeated non-appearances of the prosecution witnesses, who in the present case, are all police officials. Learned counsel has submitted that in the circumstances, the constitutional right of the petitioners to a speedy trial is being compromised on account of reasons not attributable to them and hence, they deserve to be enlarged on bail.”

4. It has been submitted that even thereafter the trial has not progressed with 15 prosecution witnesses still remaining to be examined.



Learned counsel contends that in the circumstances the possibility of the trial concluding in the near future looks remote and hence, the petitioners deserve to be enlarged on bail as the delay in the trial has been on account of the repeated non-appearance of prosecution witnesses, who in the present case are Police officials. In support learned counsel has placed reliance on *Rabi Prakash Versus The State of Odisha, 2023 Livelaw (SC) 533* and *Dheeraj Kumar Shukla Versus State of Uttar Pradesh (SLP(Crl.) No.6690/2022), decided on 25.01.2023*, wherein the Hon'ble Supreme Court had extended the concession of bail to the accused therein after doing away with the bar created under Section 37 of the NDPS Act, even though the recovery allegedly effected was classified as commercial.

5. *Per contra*, the learned State counsel while opposing the prayer and submissions made by the counsel opposite has neither disputed the custody period of the petitioners nor has it been disputed that the delay in the trial has indeed been on account of repeated absence of some of the prosecution witnesses. Learned State counsel has however asserted that the recovery effected in the present case is 270 grams of heroin which has been classified as commercial and it was made pursuant to a secret information received qua the involvement of the petitioners in drug trafficking.

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

7. The possibility of the trial concluding in the near future looks remote with the repeated non-appearance of prosecution witnesses. As



per the contents of the *zimini* orders, the case is being adjourned for reasons not attributable to the defence but to the prosecution and prosecution alone and thus the constitutional right of the petitioners to a fair and speedy trial has been compromised.

8. 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.”

9. In the facts and circumstances as enumerated hereinabove, coupled with the fact that the trial would take considerable time to conclude, this Court deems it appropriate to allow these petitions by dispensing with the conditions of Section 37 of the NDPS Act.

10. Accordingly, the instant petitions are allowed and the petitioners be admitted to bail on their 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.



11. Needless to add, in case the petitioners misuse the concession of bail granted to them, the State would be at liberty to seek cancellation of the same.

20th February, 2025
'raj'

(MANJARI NEHRU KAUL)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>