

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103)

CRM-M-41579 of 2021

Date of Decision: 27.10.2021

Atul Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Jagdish Manchanda, Advocate, for the petitioner.
Mr. Rana Harjasdeep Singh, DAG, Punjab

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

First it is to be noticed that pursuant to the order dated 14.10.2021, the Registry has stated that the a report with regard to receipt/non-receipt of the communication from the Sessions Judge, Bathinda, was inadvertently not made on 13.10.2021 due to rush of work; and that the concerned dealing assistant has duly apologized for her mistake and assured that she will remain more careful in future.

That being so, without making any further ado on that issue, it is left to rest.

As regards the report now on file from the learned Sessions Judge, Bathinda, dated 11.10.2021, it is stated that the trial in respect of the petitioner, Atul Kumar has now commenced “with evidence”.

The trial court itself, i.e. the Addl. Sessions Judge, has also sent a report to the Sessions Judge, which is also on the case file, in which it is

eventually stated that on 01.06.2021 and 07.07.2021 the accused had failed to turn up and on 16.09.2021 all the accused had moved applications for exemption of their personal presence which were however declined as the order for interim bail granted to them had been declined.

It has next been stated that the court had already initiated the process to summon the witnesses of prosecution (but with the evidence of the prosecution earlier not recorded due to the Covid-19 pandemic), the trials “in a majority of cases” have already commenced.

Very strangely the Additional Sessions Judge has not even informed of the next date of hearing in the trial qua the petitioner.

Thus, though while dismissing the petition earlier filed by the petitioner (CRM-M-39197 of 2019) on 14.09.2021, the learned State counsel appearing on that date had obviously made an incorrect statement that all prosecution witnesses had been examined and only defence witnesses were left to be examined after the statements of the accused under Section 313 of the Cr.P.C. were recorded, yet, what obviously cannot be ignored by this court is the fact the trial is now stated to have re-commenced, though the accused themselves were attempting to seek exemption from their personal appearance before the trial court.

Consequently, the reason for him having been admitted to bail, i.e. the ongoing pandemic, no longer being available as a reason for the trial to get delayed, the only ground on which the petitioner can seek to be admitted to bail, is if he convinces this court that *prima facie* no case is

made out against him, so as to overcome the bar contained in Section 37 of the NDPS Act, 1985.

No ground has been shown by the counsel for the petitioner on the merits of the case as to why the petitioner should be admitted to bail, even in terms of sub-clause (ii) of clause (b) of sub-section (1) of Section 37 of the Act of 1985.

Consequently, this petition is dismissed. However, if the trial still does not progress due to no fault of the petitioner, i.e. the trial does not progress only on account of the matter getting adjourned due to the fact that the ongoing pandemic has not completely been eradicated, he may move a similar application, but only upon surrendering before the trial court by 01.11.2021, which is the next date of hearing before that court as per counsel for the petitioner.

The trial court is now directed to ensure that the trial progresses and the matter is not adjourned from time to time for no reason, after evidence is being taken by that court in criminal cases.

It is however to be noticed that the instructions given to the State counsel earlier appearing on the basis of which he had stated before this court (in all the petitions which had come up for hearing before this court on 14.09.2021, i.e. CRM-M-39197 of 2020 and other connected petitions), that all the prosecution witnesses had been examined, is highly depreciable and the SSP concerned in all such cases, would inquire into the matter and determine as to why irresponsible statements were made by the

investigating officers as were supposed to assist the State counsel appearing on that date in all those cases.

27.10.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No