

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CRM-M-7333 of 2022
Date of Decision:20.09.2022

Sewak Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manoj Tanwar, Advocate
for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.222 dated 10.08.2021, under Sections 22(C), 61, 85 of the NDPS Act, registered at Police Station City Lambi, District Sri Muktsar Sahib.

The learned counsel for the petitioner has submitted that the petitioner is in custody from 10.08.2021 which is more than one year and after the completion of the investigation, charges were framed on 06.01.2022 but till date not even a single witness has been examined despite the fact that all the witnesses are the official witnesses since the matter pertains to the provisions of NDPS Act.

He submitted that as per the allegation, the petitioner alongwith one other co-accused were caught from the bus-stand whereby the allegations were that they were holding one bag which after seeing the police party they had thrown it on the ground from where the recovery was made. He submitted that there was no recovery from the conscious possession of the petitioner and the petitioner is not involved in any other case and it was a planted case upon the petitioner by the police since there was an enmity with the police. To substantiate his arguments, learned counsel for the petitioner has submitted that the charges were framed on 06.01.2022 and thereafter despite the fact that on ten dates the matter was adjourned by the learned trial Court and on most of the dates repeated summons were issued to the witnesses who are official witnesses including the police party but every time the report came that they remained unserved. He has referred to the photocopies of the *zimni* orders passed after framing of the charges in the Court today which are taken on record as Mark-X and while referring to the aforesaid *zimni* orders, he submitted that once the police itself has set the criminal law into motion, it is the duty of the police officials to have at least deposed before the Court and for ten dates they did not even appear and stepped into the witness box which substantiated that it was a case of false implication by the police officials.

He further submitted that in view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

On the other hand, Mr. Amit Rana, learned Senior DAG, Punjab has stated that it is correct that the petitioner is in custody from 10.08.2021 and the charges were framed on 06.01.2022 but thereafter despite ten adjournments, the police officials did not step into the witness box despite repeated summons issued

to them. He submitted that it is also correct that the petitioner has clean antecedents and is not involved in any other case. He however opposed the grant of bail to the petitioner on the ground that the confiscation of the quantity is commercial quantity since it is 7500 tablets of Tramadol and 17 vials of Cocrex.

I have heard the learned counsel for the parties.

The petitioner is stated to be in custody from 10.08.2021 which is more than one year. The learned counsel for the petitioner has referred to the *zimni* orders passed by the learned trial Court after framing of the charges, which show that repeated summons were issued to the police officials for about ten times but the prosecution witness did not step into the witness box.

On query being raised to the learned State counsel, what is the justification for delaying the trial and not stepping into the witness box, no such explanation has come forward from the learned State counsel. The petitioner is stated to be not involved in any other case.

Therefore, this Court is of the view that the conduct of the police officials who are the official witnesses in the present case, for not appearing before the learned trial Court for deposing despite repeated summons issued to them, would lead to an adverse inference and would also make the Court to have reasons to *prima facie* believe that the petitioner is not guilty of an offence at this stage. Apart from the same, the petitioner is not involved in any other case as per the learned counsel for the parties. Furthermore, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may flee from justice. Therefore, both the ingredients for making departure from the bar contained under Section 37 of the NDPS Act have remained satisfied.

In view of the aforesaid position, the present petition is allowed. The

petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

September 20, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No