

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

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CRM-M-16612-2022

Date of Decision : **July 05, 2022**

RAJNISH SHARMA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. A.K.Khunger, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.490 dated 28.12.2020 under Section 21 NDPS Act, registered at Police Station Zirakpur, District SAS Nagar.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 28.12.2020 which is more than 1½ years. He submitted that the charges in the present case were framed on 13.10.2021 and thereafter number of adjournments were given by the learned trial Court for the purpose of summoning of witnesses and since it is a case pertaining to the NDPS Act, the witnesses were the official witnesses and despite summoning the police officials for a number of times they have not caused appearance and stepped into the witness box with the result that the trial is delayed for a long time and the petitioner has suffered incarceration for more than 1½ years. He

further submitted that the allegations in the present case against the petitioner are with regard to recovery of 260 grams of intoxicant white powder containing tramadol hydrochloride alongwith polythene bag and as per the NDPS Act the commercial quantity is 250 grams. He submitted that the present case was planted upon the petitioner based on ulterior motive since he was earlier involved in some cases pertaining to theft and in those cases the petitioner was falsely implicated and that was the reason as to why the petitioner was falsely implicated in the present case. He further submitted that the petitioner is already on bail in the other cases in which he has been falsely implicated and so far as the present case is concerned, there is no justification for the prosecution to evade their presence before the learned trial Court for the purpose of stepping into the witness box. Learned counsel has also produced photocopies of some of the interlocutory order which shows that for a number of times the official witnesses including one PHG Om Parkash who was also part of the police party have been summoned for the purpose of deposing before the learned trial Court but they did not appear. He referred to the order dated 6.4.2022 passed by the learned trial Court whereby these prosecution witnesses were ordered to be summoned throughailable warrants in the sum of Rs.5,000/- with one surety each in the like amount. He further referred to another order dated 27.4.2022 whereby it was observed that PW SI Bhinder Singh and PHG Om Parkash were present but could not be examined and as such they were bound down for 18.5.2022 and while further referring to the order dated 18.5.2022 it has been recorded by the learned trial Court that no

PW was present and again the aforesaid official witnesses were summoned. He submitted that earlier the police officials were summoned by way of bailable warrants and one of the police officials was bound down for 18.5.2022 and still on that day he did not appear despite the fact that he was bound down and again summons have been issued and in this way large number of orders were passed only for the purpose of summoning the prosecution witnesses. He further submitted that the conduct of the prosecution in the present case would show that the prosecution is deliberately avoiding to depose before the learned trial Court since a false and fabricated case was planted upon the petitioner. He submitted that although the alleged confiscated quantity was of 260 grams of tramadol which is slightly above the commercial quantity under the NDPS Act but the bar contained under Section 37 of NDPS Act will not apply in the present case in view of the aforesaid facts and circumstances since the petitioner was not guilty of the offence.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is in custody from 28.12.2020 which is more than 1½ years and it is also correct that for a number of times the prosecution witnesses who are the police officials have been summoned by the learned trial Court including an order by which bailable warrants were issued against the aforesaid prosecution witnesses. He submitted that the quantity involved in the present case was 260 grams of tramadol and, therefore, the prayer of the petitioner for the grant of bail was hit by the bar contained under Section 37 of NDPS Act.

I have heard the learned counsels for the parties.

On a specific query being asked from the learned Deputy Advocate General, Punjab as to what is the justification as to why despite a number of adjournments and repeated summons being issued by the learned trial Court for summoning of prosecution witnesses who are the police officials and despite bailable warrants being issued, they have not caused appearance and till date no prosecution witness has been examined, he was not able to justify or to give any reason for the same. The net effect of the same is two fold. Firstly, the trial has been delayed because of the fault of the prosecution and the petitioner has faced incarceration for more than 1½ years. Secondly, a reasonable belief arises as to whether the conduct of the prosecution for not appearing before the learned trial Court in deposing would mean that there are some reasons to believe that the petitioner is guilty of the offence or not. On the basis of the aforesaid facts and circumstances, this Court is of the view that considering the aforesaid circumstances whereby the prosecution witnesses have not appeared before the learned trial Court for deposing after availing a large number of opportunities and despite bailable warrants being issued to them, the said circumstance has to be considered in the light of Section 37 of NDPS Act. This Court is of the view that there are reasons to believe at this stage at least that in view of the aforesaid facts and circumstances the petitioner is not guilty of the offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of NDPS Act is concerned, it is not the case of the State nor it has been stated by the learned State counsel that in case the petitioner is released on bail then he may repeat the offence or

may abscond from justice. Therefore, both the ingredients which are sine qua non for the purpose of making a departure from the bar contained under Section 37 of NDPS Act remain satisfied. Consequently, this Court is of the view that the bar contained under Section 37 of NDPS Act will not apply in the present case.

Therefore, considering the totality of the circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

July 05, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No