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

**CRM-M-18132-2021
Date of Decision: 19.04.2022**

Seeta Devi @ Seeta Rani

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Impinder Singh Dhaliwal, Advocate,
for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.398 dated 21.11.2020, under Section 22(C) of the N.D.P.S. Act, 1985, registered at Police Station Lambi, District Sri Muktsar Sahib.

It has been submitted by learned counsel for the petitioner that the petitioner is a lady aged 36 years and is not involved in any other case and has got clean antecedents. He further submitted that the present case was planted upon the petitioner by the Police due to previous rivalry and the petitioner is in custody since 21.11.2020, which is about 1 year and 4 months. He also submitted that since the present case was planted upon the petitioner, therefore, the prosecution witnesses never deposed before the

learned trial Court despite repeated opportunities given to them. Since the charges were framed on 20.02.2021 and more than one year has elapsed and despite being given 14 opportunities to the prosecution witnesses, none appeared before the Court, therefore, the petitioner may be considered for the grant of regular bail. He further submitted that although the alleged recovery from the petitioner as per the prosecution was of 7200 tablets of *Tramadol Hydrochloride* which falls in the commercial quantity, but the rigor of Section 37 of the N.D.P.S. Act will not be applicable in the present case in view of the fact that there is no justification for the prosecution witnesses who have not deposed despite being granted 14 opportunities which has therefore affected the liberty of the petitioner guaranteed under Article 21 of the Constitution of India.

On the other hand, Mr. R.S. Thind, learned Deputy Advocate General, Punjab, has submitted that it is correct that the petitioner is in custody, since 21.11.2020, which is almost 1 year and 4 months and till date no prosecution witnesses have been examined, despite the fact that for about 14 times the Court had summoned the prosecution witnesses but they were remained not served. He has, categorically submitted that the petitioner, who is a lady, is not involved in any other case whatsoever and has got clean antecedents. He has however opposed the grant of bail to the petitioner only on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the N.D.P.S. Act.

I have heard the learned counsel for the parties.

The petitioner is a lady aged 36 years and is facing incarceration for about 1 year and 4 months. During the course of

arguments, the learned counsel for the petitioner has supplied photocopies of the interlocutory orders passed after framing of the charges, which are taken on record and marked as 'X'. A perusal of the same would show that for 14 times the Court had summoned the prosecution witnesses but none appeared and therefore no prosecution witness was examined and still no prosecution witness has been examined.

It is a case of N.D.P.S. Act, where a lady has been arrested and she is facing incarceration for about 1 year and 4 months and there is no justification coming forth from the learned State Counsel as to why there was a delay by the prosecution when the criminal law machinery was set into motion by the prosecution itself and there is no justification as to why repeatedly the Court had to issue summons to the prosecution witnesses for deposing before the Court. The argument raised by the learned counsel for the petitioner that the present case has been planted upon the petitioner by the Police due to previous rivalry does carry some weight in view of the conduct of the prosecution.

Therefore, in view of the aforesaid facts and circumstances, considering the conduct of the prosecution itself, there are *prima facie* reasons to believe at least at this stage that the petitioner is not guilty of the offence and therefore the first ingredient under Section 37 of the N.D.P.S. Act for making a departure shall remain satisfied. So far as the second ingredient is concerned, it is neither the case of the State nor any argument has been raised by the learned State counsel that in case the petitioner is released on bail then she may repeat the offence or may abscond or flee from justice particularly when she is a lady having clean antecedents.

Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the N.D.P.S. Act remain satisfied and therefore, at this stage the bar contained under Section 37 of the N.D.P.S. Act will not apply to the petitioner.

Therefore, considering the aforesaid totality of the circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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.

At this stage, this Court takes judicial cognizance of the such kind of hazardous trend at the hands of the prosecution. This Court has seen in a number of cases that delay, especially in the N.D.P.S. matters, has been caused due to unexplained reasons at the hands of the prosecution, where not only repeated summons are issued to the official witnesses but also at many timesailable warrants as well as non-ailable warrants are issued to the official witnesses, who are the Police Officials, including Investigating Officers. The trial Court has to issue summons and warrants for number of times to the official witnesses, who themselves set the criminal law into motion with the result that the trial gets delayed at the hands of the prosecution itself. There is a need to strengthen the mechanism with the aid

of advanced technology for effectively serving the official witness, securing presence and fixing responsibility.

Right to speedy trial is a part of the Fundamental Rights contained under Part-III of the Constitution of India. The Fundamental Rights guaranteed under Article 21 of the Constitution of India cannot be scuttled because of such conduct of the prosecution by not deposing before the Court for number of years resulting in the delay of the trial and prejudicing the rights of the accused guaranteed under the Constitution of India. Therefore, this Court invokes its extraordinary jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure. to further explore the methods and mechanism as to how this menace can be curbed. So far as the present case is concerned, the same has already been disposed of but for the limited purpose of the aforesaid issues, the proceedings would continue, since larger issue is involved.

Let notice be issued to the State of Haryana as well as U.T., Chandigarh.

At this stage, Mr. Ranvir Singh Arya, Addl. A.G., Haryana, accepts notice on behalf of the State of Haryana.

Let notice be issued to the Senior Standing Counsel for U.T., Chandigarh with regard to the aforesaid issue.

Adjourned to 13.05.2022, for further consideration.

Mr. Kulwant Singh Boparai, Advocate is appointed as *amicus curie* to assist the Court. Let a copy of this order be supplied to him.

In the meantime, all the learned State Counsel of Haryana,

Punjab and U.T., Chandigarh shall consider the aforesaid issue at the highest level and apprise this Court in this regard.

19.04.2022

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |