

CRM-M-19769-2021 (O&M) and
CRM-M-21512-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19769-2021 (O&M)
Date of Decision: 21.12.2022

(I)

Harpreet Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-21512-2021 (O&M)

(II)

Lakhwinder Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arpinder Singh Sidhu, Advocate for
Mr. Gopal Singh, Advocate,
for the petitioner in CRM-M-19769-2021.

Mr. Ashish Aggarwal, Advocate,
for the petitioner in CRM-M-21512-2021.

Mr. Vinod Ghai, Advocate General, Punjab assisted by
Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

Both petitions are taken up together for final disposal with the
consent of learned counsel for the parties since the prayer in both the petitions
pertain to the grant of regular bail and they arise out of the same FIR.

Both petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 14 dated 12.03.2021, under Sections 21, 22 (C), 25, 29 of NDPS Act, registered at Police Station Rureke Kalan, District Barnala.

Learned counsels appearing on behalf of both the petitioners have submitted that both the petitioners are in custody from 12.03.2021 which is about 1 year and 9 month. They submitted that as per the allegations contained in the FIR, on the basis of a secret information there was an alleged recovery of 20 vials of Codeine and 200 tablets of Tramadol from the petitioners and with the result they were apprehended on the spot. They submitted that that it is a case where the petitioners have been falsely implicated in the present case and the aforesaid contraband has been planted upon the petitioners. They submitted that the rigour of Section 37 of the NDPS Act will not apply in the present case in view of the peculiar facts and circumstances. To substantiate their arguments they submitted that although there has been a recovery a commercial quantity shown qua the petitioners but the petitioners are not habitual offender and they are not involved in any other case. They further submitted that the fact that both the petitioners have been falsely implicated can be substantiated from the fact that after the completion of the investigation, challan was presented and thereafter, the learned trial Court framed the charges on 23.09.2021. Thereafter about 1 year and 3 months have elapsed but no witness has been examined till date. They have also referred to the zimni orders passed by the learned trial Court in this regard and some of which have also been attached alongwith the present petition. While referring to the

zimni orders they submitted that 21 adjournments were granted by the learned trial Court and the prosecution witnesses who are the official witnesses since the matter pertains to NDPS Act were served at the initial stages and despite being served, they did not care to depose before the learned trial Court and consequently, the learned Judge, Special Court had to issue bailable-warrants for 8 times against those prosecution witnesses at whose behest the criminal law was set into motion and rather it was the duty of the police officials who were the official witnesses to have deposed before the Court since the official witnesses were including the persons who were the recovery witnesses as well as the complainant. Not only this, on one occasion even non-bailable warrants were also issued against the official witnesses but till date for the reasons best known to the police officials, they have not deposed before the Court despite 20 repeated opportunities been given including bailable-warrants and non-bailable warrants. They submitted that the aforesaid facts and circumstances would show that the petitioners were actually falsely implicated in the present case and that is why the police officials are reluctant to step into the witness box. They further submitted that the consequences of the aforesaid situation was that the petitioners who are having clean antecedents and are not habitual offenders had to face incarceration for 1 years and 9 months with no fault of theirs and the fault is only attributable to those police officials who are the prosecution witnesses and who have planted the case upon the petitioners. They have relied upon a judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]*** and submitted that the freedom is a right which is guaranteed under Article 21 of the Constitution of India and repeated adjournments without any

justification whereby, despite being served, the police officials have not deposed would become a ground for making this Court to have reasons to believe that the petitioners are not guilty of an offence and therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

On the last date of hearing, this Court had requested the learned Advocate General, Punjab to assist in this case and in the larger perspective that this Court has for a number of times seen in number of cases whereby the police officials who are the official witnesses in the NDPS Act do not depose before the Court despiteailable warrants, non-ailable warrants and warrants of arrest been issued to them with a result that the entire trial gets delayed and accused are left with no option but to face incarceration. Looking at the sensitivity of the aforesaid situation, the learned Advocate General, Punjab has today apprised this Court that now the Director General of Police, Punjab has issued detailed instructions to the respective police officials of Districts and Commissionerates in this regard and it is hopeful that this menace will be solved as early as possible since weekly and monthly reports are being sought not only by the office of the Director General of Police, Punjab but also by the Director Vigilance, Punjab. He has supplied a copy of the aforesaid instructions/letter dated 30.11.2022. The aforesaid letter is hereby taken on record as Mark-X.

A specific query was raised to the learned Senior Deputy Advocate General, Punjab who is assisting this Court in the present case as to what was the justification as to why the prosecution witnesses in this case failed to depose for 20 long adjournments and despite repeatedailable and non-ailable warrants issued to them, he could not offer any explanation in this regard. The Hon'ble Supreme Court in *Satender Kumar Antil Versus*

Central Bureau of Investigation and another (Supra) has discussed this issue of repeated adjournments and the scope of Article 21 of the Constitution of India. Para 40 of the aforesaid judgment is reproduced as under:-

“40. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of [Section 309](#) continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate [Article 21](#). This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of [Article 21](#). While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

Considering the peculiar facts and circumstances of the present case in the light of Section 37 of the NDPS Act, this Court is of the view that the conduct of the police official for having failed to depose before the Court despite 20 adjournments granted by the learned trial Court even when the police officials were served including 8 times bailable warrants and 1 time non-bailable warrants would lead this Court to draw an adverse inference against the prosecution at least for the purpose considering the effect of

Section 37 of the NDPS Act. Therefore, this Court has reasons to believe at least at this stage that the petitioners are not guilty of the offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is a case where both the petitioners are not habitual offenders and they are having clean antecedents nor it has been so argued by the learned Senior Deputy Advocate General, Punjab that in case the petitioners are released on bail, then they may repeat the offence or may abscond from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied. Both the petitioners have faced incarceration for 1 year and 9 months would also be a ground for considering grant of bail to the petitioners in view of the fact that none of the witnesses have been examined till date despite the fact that the charges were framed on 23.09.2021.

In view of the aforesaid totality of facts and circumstances, this Court deems it fit and proper to grant regular bail to both the petitioners.

Consequently, both the petitions are allowed. Both the petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned 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 meant for the purpose of deciding the present petitions only.

21.12.2022

rakesh

Whether speaking
Whether reportable

**(JASGURPREET SINGH PURI)
JUDGE**

: Yes/No
: Yes/No