

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

CRM-M No.20349 of 2021 (O&M)
Date of decision: 14th December, 2022

Gurpreet Singh @ Tony

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Parminder S. Sekhon, Advocate for the petitioner.

Mr. Gurpreet Singh, Addl. Advocate General, Punjab
with Mr. Gulneet Singh Khurana, SSP, Moga
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

CM No.46956 of 2022

In view of the averments made in the application and in the
interest of justice, the same is allowed as prayed for and the documents
(Annexures A-1 and A-19) are taken on record.

CRM-M No.20349 of 2021

This is second petition filed by the petitioner filed under
Section 439 Cr.P.C. in case bearing FIR No.70 dated 22.07.2020 under
Section 22 of the Narcotic Drugs and Psychotropic Substances Act,
1985 registered at Police Station Smalsar, District Moga.

On the last date of hearing, learned counsel for the
petitioner had invited attention of this Court to the zimni orders

(Annexure A-1 to A-19) to show that the trial had come to a virtual standstill after the charges were framed on 02.03.2021 as the prosecution witnesses had not been appearing before the trial Court to get their evidence recorded.

In compliance of the order dated 12.12.2022, SSP Moga has come present in the Court. Status report by way of his affidavit on behalf of the respondent/State has been filed and the same is taken on record subject to all just exceptions.

Learned counsel for the petitioner has vehemently argued that the petitioner, who was arrested on 22.07.2020, had been falsely implicated in the case in hand on the allegations that he was found in possession of 5200 tablets of Clovidol. He submits that ever since the charges were framed way back on 02.03.2021, the trial has been unnecessarily prolonged not on account of any fault of the petitioner, but only on account of either the jail authorities, where the petitioner is lodged, not producing the accused before the trial Court on various dates of hearing or on account of the prosecution witnesses not putting in an appearance before the trial Court to get their evidence recorded which fact finds reflected in the zimni orders (Annexure A-1 to A-19). He submits that it is but obvious that the prosecution witnesses are also conscious that the petitioner has been falsely implicated as there is no convincing much less cogent evidence against the petitioner and hence, precisely for that reason they are intentionally avoiding getting their

evidence recorded. Learned counsel has still further submitted that the petitioner has clean antecedents as it is a matter of record that he is not involved in any other criminal case, much less under the NDPS Act. A prayer has, therefore, been made that in view of his long incarceration, the petitioner be extended the concession of bail.

SSP Moga, who has come present in Court today, has not been able to dispute that after the charges were framed on 02.03.2021, the trial has been held-up only on account of the failure of the prosecution witnesses to get their evidence recorded before the trial Court, and also because on a few dates the jail authorities did not produce the accused before the trial Court. However, the SSP submits that an enquiry has been initiated against the police officials, who have been cited as prosecution witnesses, for their non-appearance before the trial Court. He has submitted that yesterday, i.e. 13.12.2022, a few prosecution witnesses were examined by the trial Court. He has also assured the Court that he would ensure that the police officers, who are summoned as witnesses, particularly in cases under the NDPS Act, regularly appear before the trial Court on each and every date of hearing for recording of their evidence.

I have heard learned counsel for the parties and perused the relevant material on record.

A perusal of the zimni orders reveals that despite service of summons on the prosecution witnesses and on a few occasions bailable

warrants being issued to secure their presence, they failed to appear for getting their evidence recorded due to which the trial has come to a virtual standstill. The aforesaid fact without a doubt, reflects on the lackadaisical approach of the police officials and their questionable conduct, as well.

No doubt, a few prosecution witnesses have now been examined on the last date of hearing i.e. 13.12.2022, but it is evident that it was only on account of the orders passed by this Court on 12.12.2022 vide which SSP Moga had been asked to appear and furnish an explanation qua their non-appearance.

It needs to be reiterated here that the petitioner cannot be left languishing for an indefinite period during the pendency of the trial for reasons not attributable to him. Furthermore, the right to life and personal liberty granted by the Constitution of India also covers the right to speedy trial. Therefore, since the petitioner has been in custody for a significant period of time having been arrested on 27.07.2020, and the trial is being held up for no fault of his, this Court shall not remain a mute spectator, and would rather unhesitatingly interfere to secure his personal liberty.

As conceded by the learned State counsel, on instructions, since the petitioner is not involved in any other criminal case, much less under the NDPS Act, his further incarceration would serve no useful purpose.

In the facts and circumstances as enumerated hereinabove, the petition is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. However, nothing contained hereinabove shall be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

December 14, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No