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

**CRM No.M-32439 of 2022 (O&M)
Date of Decision: November 01, 2022**

Parghat Singh

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Shaveta Sanghi, Advocate
for the petitioner.

None for respondent No.1.

Ms.Puneeta Sethi, Advocate
for respondent No.2-NCB

ARCHANA PURI, J.

This is second petition under Section 439 Cr.P.C. for grant of regular bail, pending trial, to the petitioner, in case arising out of NCB Crime No.66/2017 dated 11.10.2017, under Sections 8/15/18/29/60 of NDPS Act, NCB, Zonal Unit, Chandigarh.

As per version of the prosecution, secret information was received on 09.10.2017, about Parghat Singh s/o Gurcharan Singh, to be indulging in trafficking of opium and about his reaching Ellanabad (HR) on 11.10.2017, through Nohal-Ellanabad road between 02.00 Hrs to 04.00 Hrs and he is carrying opium in his truck bearing registration No.HR-47A-6097.

In pursuance thereof, on 11.10.2017, a naka was laid on the disclosed road

and truck bearing registration No.HR-47A-6097 (as given in secret information) was intercepted. The driver of the truck was Parghat Singh s/o Gurcharan Singh, against whom, specifically there was prior information. Following due procedure, Parghat Singh got recovered 15.128 kgs. of opium and poppy husk to the extent of 1.890 kgs., whereupon, complaint/case was registered.

On completion of investigation, complaint/challan was filed in the Court and petitioner Parghat Singh is facing trial.

Learned counsel for the petitioner assiduously submits that the petitioner is in custody since 11.10.2017 and has suffered incarceration for more than five years. Also, it is submitted that there is no likelihood of completion of trial in near future. Out of cited 12 witnesses, still only 6 witnesses have been examined. To so emphasize her submissions about the trial proceeding at snail's pace, learned counsel for the petitioner has made reference to the zimini orders passed by the trial Court, qua examination of the witnesses. Further, it is also submitted that length of custody is a material consideration to be seen. On this count, learned counsel for the petitioner has placed reliance upon orders passed by the Hon'ble Supreme Court in cases of '*Shariful Islam @ Sarif vs. The State of West Bengal*', decided on 04.08.2022, '*Mohammad Salman Hanif Shaikh vs. The State of Gujarat*', decided on 22.08.2022 and '*Nitish Adhikary @ Bapan vs. The State of West Bengal*', decided on 01.08.2022 and judgment passed in '*Gopal Krishan Patra @ Gopalrusam vs. Union of India, Criminal Appeal No.1169 of 2022*' decided on 05.08.2022.

Thus, summing up her arguments, learned counsel for the

hampers the right of speedy trial, under Article 21 of the Constitution of India. As such, she made a prayer for grant of regular bail to the petitioner.

On the other hand, learned counsel for NCB has resisted the claim for regular bail. Learned counsel submits that recovery effected in the present case, falls in the bracket of commercial quantity and therefore, rigors of Section 37 of the NDPS Act, are attracted. Also, she submits that out of 12 cited witnesses, 6 have already been examined, 3 witnesses have been given up and only 3 witnesses are left to be examined. She assures that the residue witnesses shall be examined expeditiously. As such, she made a prayer for dismissal of the present petition.

At the very outset, it is pertinent to mention that from the zimini orders, placed on record, it is evident that complaint/challan in the present case, was presented on 04.04.2018. Copies were supplied to the petitioner on 10.04.2018. Thereafter, the case was adjourned for 23.04.2018, then for 01.05.2018 and 14.05.2018, for consideration on the question of charge, solely on account of adjournment sought by the counsel for the prosecution. Thereafter, the case was adjourned for three times and ultimately, the charge was framed on 23.08.2018. However, for the next three dates, the Presiding Officer was on leave and the case was adjourned further. On 08.10.2018, one witness was examined and three witnesses, who were present, were not examined, as Court time was over. Similar was the position for next two dates. On 21.01.2019, service of witnesses had not been effected and they were ordered to be served throughailable warrants and case was adjourned for 01.03.2019. On 01.03.2019, part statement of one PW was recorded and another witness, who was present, could not be examined due to paucity of court time and the case was adjourned further

for 01.04.2019. On 01.04.2019, the witness who was served, had sent a request for adjournment and the case was adjourned for 21.05.2019. On 21.05.2019, on the request of the witness, the case was adjourned further for 16.08.2019. On 16.08.2019, two witnesses were not present despite service and they were ordered to be served throughailable warrants for 05.10.2019. On 05.10.2019, three witnesses were present but could not be examined, as Court time was over and case was adjourned for 16.11.2019. On 16.11.2019, no witness was present and case was adjourned for 04.12.2019. Again, on 04.12.2019, the witnesses were not present and they were ordered to be served throughailable warrants for 06.01.2020. On 06.01.2020, statement of one PW was completed and two witnesses, who were present, were not examined and case was adjourned for 24.01.2020. On 24.01.2020, one witness was examined and case was adjourned for 02.03.2020.

Thereafter, on account of Covid situation, case was adjourned further, in pursuance of the directions given by the concerned District and Sessions Judge, firstly for 27.05.2020, then for 29.07.2020. On 29.07.2020, the accused was not produced and case was adjourned for 21.10.2020 and further adjourned for the same purpose for 19.01.2021 and then for 26.02.2021. On 26.02.2021, one witness was examined and case was adjourned for 06.02.2021, then for 04.05.2021 and further for 09.08.2021. Thereafter, Presiding Officer was on leave and the case was adjourned further for 24.09.2021. On 24.09.2021, no PW was present and case was adjourned for 18.11.2021. On 18.11.2021, the service of witnesses was not effected and case was adjourned for 11.01.2022. On 11.01.2022, one witness was examined. However, two witnesses cited at Sr.No.10 and 11,

were not present and they were summoned throughailable warrants for 25.02.2022. Again on the date fixed, witnesses were not present and they were ordered to be served through non-ailable warrants for 17.05.2022. On 13.05.2022, the case was adjourned further, as the Presiding Officer was on leave from 16.05.2022 to 19.05.2022 and then again, on effective date, the case was adjourned for 15.09.2022.

Thus, the seriatim of facts, as narrated aforesaid reveals that there is no fault on the part of the petitioner, in the delay of trial. However, fact remains that trial is proceeding at snail's pace. In fact, slackness is reflected on the part of the prosecution, vis-a-vis the examination of the witnesses.

In ***Shariful Islam's case (supra)***, considering the incarceration of the accused for over a period of 1 years and 6 months and there being no likelihood of completion of trial in the near future, the accused was directed to be released on bail by the Hon'ble Supreme Court.

Even, in ***Mohammad Salman Hanif Shaikh's case (supra)***, the Hon'ble Supreme Court made an observation, as herein given:-

“We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/concerned Trial Court.

The Special Leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of.”

The aforesaid case was under the NDPS Act and FIR was

registered under Sections 8(c), 21(c), 22(c) and 29 of the NDPS Act. The case of the prosecution therein was that recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that concession of bail was granted to the petitioner (therein), only on the ground that he had spent about two years in custody and conclusion of the trial, will take some time.

In *Gopal Krishna Patra's case (supra)*, the Hon'ble Supreme Court, observed about the appellant (therein) to be in custody since 18.06.2020, in connection with crime registered as NCB Crime No.02/2020, in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and also while considering the length of custody undergone by the appellant (therein), it was of the view the case for bail is made out and thereupon, the appeal was allowed.

A perusal of the aforesaid case would show that in the said case also, the custody was of 2 years 1 month and 17 days and the case was under NDPS Act. Primarily, considering the length of custody period, concession of bail was granted to the petitioner (therein).

In *Nitish Adhikary's case (supra)*, which was also under NDPS Act, taking into consideration the detention period of 1 year 7 months, as on 09.06.2022 and also considering the case at preliminary stage as well as petitioner, not having any criminal antecedents, without expressing any views on the merits of the case, the Court was inclined to grant bail to the petitioner and it was ordered, accordingly.

A perusal of the aforesaid order would also show that the said

were mentioned in the same. The bail was granted primarily considering the custody period of the petitioner (therein) and one witness having been examined and petitioner (therein) not having any criminal antecedents.

As already observed above, petitioner-Parghat Singh is in custody since 11.10.2017. As per status report, furnished by the NCB, out of cited 12 witnesses, 6 witnesses have been examined, 3 witnesses have been given up and 3 witnesses remains to be examined. Learned counsel for NCB has though given an assurance for expeditious examination of the residue witnesses, but however, perusal of the zimini orders, as observed aforesaid, reveals about the witnesses not making appearance, despite service throughailable warrants. Thus, Court below was constrained to issue non-bailable warrants of the witnesses. In given circumstances, there is no likelihood of the examination of the witnesses expeditiously, as assured by learned counsel for NCB.

The petitioner in the present case has undergone custody of more than 5 years and as per the custody certificate, coming on record, he is not having any criminal antecedents.

Keeping in view the aforesaid circumstances and also keeping in view the conduct of the witnesses of the prosecution, in not making appearance before the Court, despite service ofailable warrants, the right of the petitioner to speedy trial, as provided by the Constitution of India, is hampered.

In view of the aforesaid circumstances, without expressing any opinion on merits or demerits of the rival submissions and considering the facts and circumstances brought on record, the case for bail is made out.

Hence, the present petition is allowed and petitioner Parghat Singh is

ordered to be released on bail subject to furnishing bail bonds in the sum of ₹3,00,000/-, with two sureties in the like amount each, to the satisfaction of the Judge, Special Court, NDPS Act. However, Special Judge shall be at liberty to impose any further condition, as it may deem appropriate, considering the circumstances of the case.

(ARCHANA PURI)
JUDGE

November 01, 2022
Vgulati

Whether speaking/reasoned	Yes
Whether reportable	No