

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

122+331

CRM-M-36735-2022 (O&M)
Date of decision: 21.09.2022

GURBIR SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Nandal Jindal, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG Punjab.

MANJARI NEHRU KAUL. J. (ORAL)

CRM-33982-2022

Allowed as prayed for.

CRM-M-36735-2022

This is the 03rd petition filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.215 dated 23.10.2020 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 NDPS Act added later on) registered at Police Station Chhehartta, District Amritsar.

Learned counsel submits that after the dismissal of two petitions on 03.03.2021 and 30.06.2021, the trial has come to a virtual standstill as none of the prosecution witnesses, who admittedly are all official witnesses, have failed to put in appearance before the Court below to get their evidence recorded. While inviting the attention of this Court to the zimni orders annexed as Annexure P-2, he submits that a perusal of them right from from 09.09.2021 to 15.07.2022

reveals that on as many as 10 dates, the case had to be adjourned on account of non-appearance of the prosecution witnesses, and still further, on a few dates, non-bailable warrants had been issued to procure their presence. He submits that recovery effected from the petitioner i.e. 255 grams of heroin was marginally higher than the minimum quantity prescribed under the commercial quantity i.e. 250 grams. It has been submitted that the petitioner has clean antecedents and he is not involved in any other case, much less, under the NDPS Act. A prayer has therefore been made to extend the concession of bail to the petitioner as in the aforementioned facts and circumstances, the trial is unlikely to conclude in the near future and his further incarceration would not serve any useful purpose.

Per contra, learned State counsel on instructions from ASI Sarwan Singh has controverted the submissions made by the counsel opposite that none of the prosecution witnesses have been examined. He submits that as per instructions received, one witness i.e., the official who had registered the FIR in question pursuant to receipt of the *ruqa* had been examined. However, he has not been able to controvert the submissions made by the counsel opposite that despite issuance of bailable as well as non-bailable warrants to secure the presence of the other prosecution witnesses, including the Investigating Officer and Gazetted Officer, they had failed to put in appearance and get their evidence recorded before the trial Court. He, however, submits that since recovery effected from the petitioner, though marginally higher, falls under the commercial quantity, he be not extended the concession of bail.

On a pointed query put to the learned State counsel he has conceded that the petitioner is not involved in any other case under the NDPS Act.

I have heard learned counsel for the parties and perused the material

on record.

This is yet another case where on account of the lackadaisical approach of the official respondents, the trial has come to a virtual standstill as their evidence has not been recorded on various dates of hearings. The trial has, therefore, been delayed. The petitioner cannot be left to languish for an indefinite period during the pendency of a trial for reasons not attributable to him. It needs to be reiterated that the right to life and personal liberty granted by the Constitution of India also covers the right to speedy trial. Therefore, when an under trial has been in custody for a significant period of time like the case in hand and the trial is being held up for no fault on his part, the Courts cannot be expected to be a mute spectator and should rather unhesitatingly interfere for securing the personal liberty of an under trial.

In the the facts and circumstances as enumerated hereinabove, the instant petition is allowed and the petitioner, who has been in custody since 23.10.2020 is admitted to bail to the satisfaction of trial Court/Duty Magistrate. However, it is made clear that anything contained in this order shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 21, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>