

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

**CRM-M-36142-2022 (O&M)
Date of Decision : 21.11.2022**

Jasbir Singh @ Kala

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.S.Dhaliwal, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG Punjab.

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ALKA SARIN, J. (Oral)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.01 of 2020 dated 05.01.2020 registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') at Police Station Rureke Kalan, District Barnala. The first petition preferred by the petitioner for grant of regular bail being CRM-M-24370-2020 was dismissed as withdrawn on 10.12.2020 and the second petition being CRM-M-19629-2021 filed by the petitioner was dismissed by this Court vide order dated 05.01.2022.

Learned counsel for the petitioner would contend that the change in the circumstance in the present case since the passing of the order dated 05.01.2022 is that despite the challan having been filed on 30.06.2020 out of 13 witnesses only one witness has been examined. Learned counsel

has further referred to the *zimni* orders passed by the Trial Court which reveal that despite bailable/non-bailable warrants having been issued for securing the presence of the official witnesses, they are not coming present to get their statements recorded. Learned counsel has further contended that the petitioner has now been in custody for a period of 02 years 10 months and 14 days and that there is no other case pending against the petitioner.

Per contra, the learned counsel for the State has vehemently opposed the grant of regular bail on the ground that the second bail petition being CRM-M-19629-2021 was dismissed by a speaking order by this Court on 05.01.2022. Learned counsel for the State is, however, not in a position to deny the fact that the official witnesses are not coming present in the Court despite the issuance of bailable/non-bailable warrants. There is no explanation forthcoming for the conduct of the police officials. Mr. Major Singh, the Superintendent of Police, Headquarters is present in Court today. Except for stating that departmental enquiry has been initiated against the erring police officials, there is no explanation forthcoming for their non-appearance before the trial Court though he has assured that on the next date of hearing before the Trial Court the summoned witnesses will remain present in Court for getting their statements recorded.

Heard.

In the present case, despite the challan having been filed on 30.06.2020, there is no progress in the trial primarily because of the conduct of the official witnesses who have brazenly been violating the orders of the Court and have not been appearing. Surprisingly the non-bailable warrants

issued are also not being served upon the erring officials. The Supreme Court in **Satender Antil Vs. Central Bureau of Investigation & Anr. [AIR 2022 SC 3386]** has in the case of commercial quantity enlarged the accused on regular bail keeping in view the long custody period. In the present case the petitioner has been in custody since 05.01.2020 and there is no other case pending against the petitioner and keeping in view the fact that the trial is not progressing, this Court is of the view that the petitioner deserves the concession of regular bail.

In view of the above and without commenting upon the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Judge, Special Court (Duty), Barnala.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Before parting with the order, keeping in view the statement made by Mr. Major Singh, Superintendent of Police, Headquarters, who is present in Court, that the summoned official witnesses shall appear before the Trial Court concerned on the next date of hearing and that departmental enquiry has been initiated against the erring officials, this Court does not wish to take any further action against the erring officials. However, it is

expected that the departmental enquiry shall proceed expeditiously against the officials concerned and that such conduct is not repeated in future.

Disposed off.

November 21, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO