

230

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

CRM-M-37272-2022

Date of Decision: 09.11.2022

Avtar Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Sandhu, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.117 dated 08.07.2021, under Sections 22(C) & 29 of the N.D.P.S. Act, 1985, registered at Police Station Sangat, District Bathinda.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 1 year, 3 months and 28 days and investigation of the case has already been completed and thereafter, the charges have also been framed on 11.03.2022. He further submitted that the petitioner has been falsely implicated in the present case and the same has been planted upon him. He further submitted that the petitioner has got clean antecedents and he is not involved in any other case.

Learned counsel for the petitioner has while referring to the

FIR and prosecution story has submitted that the allegation which has been made against the petitioner was that the police party which was headed by one ASI Surjit Singh in a private vehicle saw the petitioner holding one transparent plastic bag in his right hand and on seeing the police party, he threw away the transparent plastic bag and started running back. Thereafter, the ASI after getting suspicious apprehended him and the plastic bag was also taken into custody which contained 2400 loose tablets of *Tramadol Hydrochloride*. He further submitted that on the face of it the case has been planted upon the petitioner as nobody would have carried any intoxicant substance in a transparent plastic bag and apart from the same, the same has not been recovered from the conscious possession of the petitioner. He also submitted that the petitioner is entitled for the grant of regular bail primarily due to the following reasons:-

1. When the police party made an offer under Section 50 of the NDPS Act then the offer was totally defective and contrary to the provisions of Section 50 of the NDPS Act. He read out the vernacular of the offer notice in which it has been stated by the ASI that the petitioner has got a right to be searched either from the ASI himself or from a Gazetted Officer or from a Magistrate and a bare reading of the same would show that it is totally a defective offer since three options cannot be given and rather the entire purpose of Section 50 of the NDPS Act gets defeated in case the offering officer states that the apprehended person has right to be searched from the police officer himself. He also submitted that as per

provisions of Section 50 of the NDPS Act offer can be given for getting the accused searched only from two authorities i.e. Gazetted Officer or a Magistrate. He also referred to the judgment of “State of Rajasthan Vs. Parmanand & another”, 2014(5) SCC 345.

2. He submitted that the charges in the present case has been framed on 11.03.2022 and has also produced the photocopy of the zimni orders passed by the learned trial Court after framing of the charges. The photocopy of the zimni orders as given by the learned counsel for the petitioner in the Court are hereby taken on record and Marked 'X'. While referring to the aforesaid zimni orders, he submitted that the criminal law was set into motion by the police itself and according to the FIR ASI Surjit Singh was heading the police party but he has not even chosen to step into the witness box despite repeated summons being sent to him. He referred to order dated 23.09.2022, whereby the learned trial Court had observed that the summons sent to ASI Surjit Singh have been received back served but he has not come present despite service, therefore, bailable warrants were issued in the sum of Rs.5000/- with one surety in the like amount and it was also directed that a red note on the summons/warrant be given directing the concerned SHO to effect the service of witnesses by deputing some responsible official and the case was adjourned to 28.10.2022 and when the case came up for

hearing on the aforesaid date, it was observed that the bailable warrants of ASI Surjit Singh has been received back with the evasive report of intimation on phone which is not proper service and thereafter, he was again summoned through bailable warrant for 21.12.2022. Similarly, summons sent to LC Jaspreet Kaur were received back unexecuted. Learned counsel further submitted that the police personnel, who had set the criminal law into motion himself is not appearing before the Court and the trial Court is constrained to issue bailable warrants twice against him which also would go into show that the petitioner has been falsely implicated in the present case. He further referred to the latest judgment of the Hon'ble Supreme Court passed in “Satender Kumar Antil Vs. Central Bureau of Investigation and another”, 2022 AIR (SC) 3386, with regard to the right of speedy trial in such like cases.

3. The petitioner is not involved in any other case and has got clean antecedents.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has filed a custody certificate of the petitioner in the Court today, which has been taken on record and as per the custody certificate the petitioner is not involved in any other case and has faced incarceration for 1 year, 3 months and 28 days. He has submitted that no witness has been examined till date and has also not disputed the zimni orders passed by the learned trial Court which has been referred to by the learned counsel for the petitioner.

I have heard the learned counsel for the parties.

At the outset a query was raised to the learned State counsel with regard to making of an offer under Section 50 of the NDPS Act to the petitioner to which he submitted that it is correct that as per the offer it was given for getting the petitioner searched from three persons i.e. ASI himself or the Magistrate or the Gazetted Officer. Learned State counsel has not disputed that this was a defective offer and contrary to the mandatory provisions of Section 50 of the NDPS Act. On another query being raised to the learned State counsel as to what was the justification for the ASI, who allegedly apprehended the petitioner and absented himself from the Court for a number of times so that the trial Court was constrained to issue bailable warrants against him twice, the learned State counsel was not able to give any justification with regard to the same.

It is very strange to note that a person who is having clean antecedents and being not involved in any other case and has faced incarceration for more than 1 year and 3 months and is facing trial, then why the police official who has allegedly apprehended him and was heading the police party has absented himself from stepping into the witness box and therefore, the trial Court gets constrained to issue bailable warrants against him twice. The law with regard to the speedy trial and such unnecessary adjournments have been discussed by the Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)*. Apart from the above, the offer which was given to the petitioner was apparently defective and contrary to the provisions of Section 50 of the NDPS Act, since as per the offer, the ASI had offered the petitioner to get him searched either from he himself i.e.

ASI Surjit Singh or a Gazetted Officer or a Magistrate. Although this Court does not wish to go into the merits of the present case since the trial is pending but for the purpose of considering the grant of regular bail to the petitioner and also considering the effect of Section 37 of the NDPS Act, the aforesaid two aspects deserve to be considered in true perspective.

Due to the aforesaid facts and circumstances, this Court is of the view that there are *prima facie* reasons to believe that the petitioner is not guilty of offence at least at this stage. So far as the second ingredient with regard to the likelihood of the petitioner repeating the offence is concerned, it is neither the case of the State nor it has been so pleaded by the learned State counsel that in case the petitioner is released on bail, then he may abscond or flee from justice or may repeat the offence. Apart from the above, the petitioner is stated to be not involved in any other case and is having clean antecedents.

Therefore, this Court is of the view that both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the 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 only meant for the purpose of decision of present petition.

Before parting with the judgment, this Court would like to note that in a large number of cases, defective offers are made under Section 50 of the NDPS Act. The concerned police officials are either lacking in training or they are exercising the powers in a *mala fide* intention. Be that as it may, it is serious in nature. The statutory provisions which are mandatory in nature have to be complied with in true spirit.

In view of the above, a copy of this order be sent to the Director General of Police, Punjab for his information and it is expected that the Director General of Police will look into this issue where the mandatory statutory provisions of the NDPS Act are not complied with by the police officers in the State of Punjab.

09.11.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |