

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

211

**CRM-M-45531-2021
Decided on : 09.05.2022**

Gursewak Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. D.S. Pheruman, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab
assisted by ASI Hira Singh.

MANJARI NEHRU KAUL, J. (Oral)

This is the fourth petition filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 0003, dated 04.01.2020, under Sections 21/29 of the NDPS Act 61 of 1985, registered at Police Station Sarai Amanat Khan, District Tarn Taran (annexed as Annexure P-1).

A pointed query was put to the learned counsel for the petitioner as to what were the material change in circumstances, subsequent to the withdrawal of the previous petition filed under Section 439 Cr.P.C. On 08.07.2021, to which he submitted that despite the challan having been presented way-back on 13.06.2020, charges had not yet been framed.

Learned counsel for the petitioner submits that after 13.06.2020, the case has been repeatedly adjourned and even after the Courts resumed normal functioning subsequent to the *pandemic* Covid-19, the trial has made no progress and has come to a virtual standstill. Furthermore, he submits that the petitioner was last produced before the trial Court by the jail authorities on 17.08.2021 and thereafter, the case was

adjourned to various dates i.e. 06.09.2021, 23.09.2021, 14.10.2021, 09.11.2021, 29.11.2021, 23.12.2021, 27.01.2022, 02.03.2022 and finally to 10.05.2022 for production of the accused including the petitioner. Learned counsel still further submits that even though the production warrants were issued by the trial Court for each of the aforementioned dates, yet, the jail authorities had not bothered to produce the petitioner before the trial Court. Hence, the petitioner had been suffering long incarceration for almost 2½ years and there was no likelihood of the trial concluding in the near future. Learned counsel submits that the petitioner has been falsely implicated in the case, in hand and has clean antecedents as he is not involved in any other criminal case, much less, under the Narcotic Drugs and Psychotropic Substances Act.

Vide order dated 26.04.2022, a report was called for, from the trial Court concerned, as to why the trial had not been proceeding after the challan had been presented almost two years back. A report has since been received from the trial Court concerned, which is placed at Flag 'A' in the case file. It has been perused by this Court. As per the report received, charges could not be framed against the accused, as the petitioner and the co-accused were not being produced by the jail authorities and despite production warrants having repeatedly been issued for securing their presence, the jail authorities had failed to produce them.

Per contra, learned State counsel on instructions from ASI Hira Singh, has not been able to controvert the submissions made by the counsel opposite that it was the jail authorities, who had not been producing the petitioner and the co-accused on various dates of hearing. Learned counsel submits that a recovery of 350 grams of heroin was

effected from the petitioner and hence, he does not deserve the concession of bail. A pointed query was put to the learned State counsel as to whether the petitioner was involved in any other criminal case, to which, he replied in the negative though he submitted that one case under the Prison Act stood registered against the petitioner, which finds mentioned in his custody certificate dated 04.05.2022, which has been placed on record by the learned State counsel.

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

This Court is constrained to observe that it is on account of the lackadaisical approach of the jail authorities concerned, the petitioner has not been produced before the trial Court despite issuance of production warrants by the trial Court concerned. The trial has, therefore, been delayed and come to a virtual standstill.

This Court would like to observe here that under trial prisoners cannot be left languishing for an indefinite period during the pendency of a trial for reasons not attributable to them, except if, there are some convincing and satisfactory reason for their incarceration. No doubt, the learned State counsel did submit that a recovery of 350 grams of heroin was allegedly effected from the petitioner. However, at the same time, it needs to be re-iterated 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 prisoner has been in custody for a significant period of time and the trial is being held up for no fault on his part, like in the case in hand, and the trial is not expected to conclude within a reasonable time, 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 facts and circumstances as enumerated here-in-above, this Court deems it fit to extend the concession of bail to the petitioner during the pendency of the trial as he has now been in custody for more than two years and five months, having been arrested on 04.01.2020 coupled with the fact that he is not involved in any other criminal case. The petition is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that any observation made here-in-above shall not be construed as an expression of opinion on the merits of the case.

Before parting, the Director General of Police (Prisons), Punjab, would be well advised to look into the poor state of affairs, which is prevailing in the jails across the State of Punjab, as this is not the first instance which has come to the notice of this Court, wherein the accused have not been produced before the trial Court, despite production warrants having been issued for securing their presence, as a result of which, the trials are getting unnecessarily delayed. In fact, the scant respect which the authorities concerned have for the orders of the Court is clearly discernible in the case, in hand.

A copy of this order be sent to the Director General of Police (Prison), Punjab, to look into the matter and take necessary steps in the aforementioned regard.

(MANJARI NEHRU KAUL)
JUDGE

May 09, 2022

gurpreet/J.Ram

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