

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-46720 of 2021
Date of Decision:17.10.2022

Rakesh Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Amit Rana, Senior DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present is a petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.82 dated 26.04.2021, under Section 22 of the NDPS Act, registered at Police Station Gharinda, District Amritsar.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 26.04.2021, which is almost one year and five months. The learned counsel submitted that it is a case where the petitioner was apprehended allegedly alongwith 7500 loose tablets of Tramadol and the present case was planted upon the petitioner by the police officials. He submitted that the entire exercise undertaken by the police was a farce exercise due to the following

reasons:-

1. The police party had allegedly come in a private vehicle for the purpose of patrolling and there is no justification as to why the police party was not on the Government vehicle;
2. At the time when allegedly the petitioner was apprehended then in pursuance of Section 50 of the NDPS Act notice was given to him in which an offer was given for the purpose of getting searched either in the presence of a Magistrate or a gazetted officer and thereafter vide Annexure P-4 a second offer was given by the DSP who is stated to be a gazetted officer by which he stated that he has a right to be searched either from him or any other gazetted officer or any other Magistrate. Learned counsel has submitted that it was only a farce exercise and no such offer was given in this regard which is clear from the fact that on the consent memo even Section 22 of the NDPS Act has been mentioned in a typed form and he has also drawn the attention of this Court to the vernacular part of the same and submitted that it is a case of chance recovery and loose tablets were recovered and it could not be ascertained as to what were the ingredients of the tablets and still Section 22 of the NDPS Act has been invoked even prior to the registration of the FIR. He submitted that although the laptop and the printer were available with the police party but they could not have invoked a particular section without knowing the salt of the loose tablets

and it was not a case of any branded tablets at all.

3. The learned counsel submitted that the petitioner has clean antecedents and is not involved in any other case and is not a habitual offender. The charges in the present case were framed on 01.11.2021, which is more than 11 months and has also referred to the zimni orders which have been passed by the learned trial Court after the framing of the charges to state that despite a number of adjournments being granted by the learned trial Court including the issuance of the bailable warrants to the police officials, no prosecution witness has been examined till date. He submitted that it is a clear case of false implication of the petitioner and that was the reason as to why the police officials did not step into the witness box for more than 11 months and there is no justification for the same.

Learned counsel has submitted that in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the present case particularly in view of the conduct of the police officials.

On the other hand, Mr. Amit Rana, learned Senior DAG, Punjab, has submitted that it is correct that the petitioner is in custody from 26.04.2021, which is one year and five months and the charges in the present case were framed on 01.11.2021 and till date no prosecution witness has been examined. He submitted that it is also correct that the petitioner is not a habitual offender and is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about one year and five months and the allegations against him were that he was apprehended with 7500 loose tablets which contained the salt of Tramadol. The ascertainment of the salt of Tramadol was made after receiving the report from the FSL. However, at the time of confiscation of the contraband if any, the nature of the salt could not be known to the police officials unless the tablets are branded or having some batch number etc. but from the loose tablets it could not have been possible for the police officials to ascertain with full confidence as to what was the nature of the salt. Still in the consent memo the provision of Section 22 of the NDPS Act has been incorporated by way of typing and that appears to have been done prior to the lodging of the FIR.

The photocopies of the zimni orders have been supplied by the learned counsel for the petitioner to the Court and the same are taken on record as Mark-X. A perusal of the same would show that the charges in the present case were framed on 01.11.2021. Thereafter when the matter came up for hearing on 15.12.2021, no prosecution witness was present and the summons were not received back and they were again summoned for 24.01.2022. Again on 24.01.2022 no prosecution witness was present and were summoned again. On next date, i.e. 16.03.2022 again no prosecution witness was present and they were again summoned for 29.04.2022. When the matter came up for hearing on 29.04.2022 again no prosecution witness was present and they were again summoned for the date fixed. Thereafter, when the matter came up for hearing 01.06.2022 before the trial Court, again no prosecution witness was present and it was observed by the learned trial

Court that bailable warrants in the sum of Rs.2000/- each be issued against the witnesses who were mentioned in the order, i.e. ASI Sukhwinder Singh and SI Paramjit Singh. Again when the matter came up for hearing before the learned trial Court on 05.08.2022 Inspector Paramjit Singh and ASI Sukhwinder Singh were present but not examined due to the fact that the evidence in some other case was going on and they were bound down for the next date of hearing, i.e. 06.10.2022. However, on 06.10.2022 no prosecution witness was present despite the fact that on the earlier date they were bound down and therefore they were again summoned. In this way, for a number of dates, the matter was adjourned from time to time and at one point of time the trial Court was constrained to issue bailable warrants against the prosecution witnesses who are police officials.

Whenever FIR is registered under the NDPS Act, the criminal law is set into motion by the police officials themselves and normally under the NDPS Act the witnesses are by and large official witnesses. For 11 months these witnesses who themselves had set the law into motion and did not step into the witness box and there is no justification coming forth in this regard.

On a specific query being raised to the learned State counsel as to whether there was any cogent reason for not deposing before the Court for a period of 11 months, resulting in the incarceration of the petitioner for one year and five months, the learned State counsel was not able to justify the same. The consequence of delay by the prosecution witnesses without any justification has led to long incarceration of the petitioner.

Apart from the above, it is a case where the petitioner is not a habitual offender and is not involved in any other case. Therefore, while considering the bar

contained under Section 37 of the NDPS Act, the aforesaid conduct of the police officials would certainly be considered by this Court. The non-appearance of the prosecution witnesses who are police officials especially in the NDPS Act cases, resulted in the delay in the trial. This aspect has now been discussed by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 SCC Online SC 825.

Therefore, this Court is the considered view that in view of the aforesaid peculiar facts and circumstances and considering the conduct of the police officials which resulted in the delay of the trial and also considering the fact that the petitioner is not a habitual offender and has clean antecedents, this Court has *prima facie* reasons to believe that at least at this stage the petitioner is not guilty of the offence. So far as the second ingredient for the purpose of making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is neither stated to be involved in any other case nor it is the case of the learned State counsel that in case the petitioner is released on bail then he may repeat the offence or may abscond from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the Act remain satisfied. Learned State counsel however referred to paragraph 7 of the reply wherein it is stated that there is a strong apprehension that in case the petitioner is granted bail then he may abscond. However, on a query being raised to the learned State counsel as to what is the basis of the aforesaid apprehension, he was not able to justify the same.

In view of the aforesaid fact and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, the present petition

is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expresion of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

October 17, 2022
dinesh

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