

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-43077 of 2020
Date of Decision:12.10.2022

Gagan Kumar @ Mohan Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gurpal Singh Sandhu, Advocate,
for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present is a second 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.225 dated 15.12.2019, under Section 22 of the NDPS Act, registered at Police Station Gidderbaha, District Sri Muktsar Sahib.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 15.12.2019, which is about two years and ten months. The charges in the present case were framed on 09.08.2021, which is almost one year and two months. He submitted that the petitioner is not a habitual offender and is not involved in any another case and has clean antecedents. He further submitted that the petitioner has been falsely implicated in the present case

alongwith other co-accused namely Mandeep Singh wherein the allegations were that on the basis of a chance recovery the police party headed by one ASI Jaskaran Singh apprehended the petitioner and the other co-accused. Learned counsel has further submitted that although the empty formality of calling the gazetted officer who was a DSP was made but in fact the petitioner has been falsely implicated in the present case and 6500 tablets of Tramadol were planted upon the petitioner and the other co-accused.

Learned counsel for the petitioner has submitted that the aforesaid argument addressed by him is substantiated from the fact that the petitioner was in fact arrested on 15.12.2019 and the charges were framed on 09.08.2021 and thereafter for more than one year and two months, the trial Court had adjourned the case for a number of times wherein the prosecution witnesses did not appear. He submitted that it is a case under the NDPS Act where the witnesses are the official witnesses. The criminal law was set into motion by the police party itself but the police officials themselves did not even chose to appear before the learned trial Court for a large number of times and there is no justification for the same and consequently the petitioner who is having the clean antecedents, has to face incarceration for about two years and ten months and till date no prosecution witness has been examined. During the course of arguments, the learned counsel for the petitioner also submitted photocopies of the zimni orders passed by the learned Judge, Special Court, Sri Muktsar Sahib, from the date of the framing of the charges, i.e. 09.08.2021. The photocopies of the said zimni orders are hereby placed on record as Mark-X. He submitted that in view of the factual position, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner

and therefore he prayed for the grant of regular bail.

On the other hand, Mr. Amit Rana, learned Senior DAG, Punjab, on instructions from ASI Raj Singh who is present in court, has submitted that it is correct that the petitioner has faced incarceration for about 2 years and 10 months and charges were framed on 09.08.2021 but thereafter no prosecution witness has been examined. He submitted that it is also correct that the petitioner is not involved in any other case and is not a habitual offender. He has however opposed the grant of bail on the ground that the bar contained under Section 37 of the Act will apply against the petitioner.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about two years and ten months. After completion of the investigation, challan was presented in the present case and thereafter charges were framed on 09.08.2021, which is almost one year and two months. It is not in dispute that the petitioner is not involved in any other case and is not a habitual offender. A perusal of the zimni orders which were produced by the learned counsel for the petitioner during the course of arguments, shows that on 09.08.2021 charges were framed. Thereafter, the matter was posted for 31.08.2021 and no prosecution witness was present and the petitioner and other co-accused were produced in custody through VC and again the matter was adjourned for 28.09.2021 wherein only one PW namely LC Ramandeep Kaur was present, but she was not examined and was bound down for 20.10.2021. The petitioner was also produced on that day but the other co-accused was not produced. On the next date of hearing, no prosecution witness was present and although earlier the prosecution witness was bound down by the Court and again

the summons to the prosecution witnesses were ordered to be issued. Thereafter, when the matter came up for hearing on 18.11.2021 before the trial Court, again it was observed that no prosecution witness was present and again summons were ordered to be issued to the prosecution witnesses. Thereafter, on 07.12.2021 again no prosecution witness was present and the petitioner and the other co-accused were produced by the jail authorities through VC and again the summons were ordered to be issued to the prosecution witnesses. Thereafter on 04.01.2022 again no prosecution witness was present and again summons to the prosecution witnesses were issued. On 25.01.2022 although the petitioner was produced through VC but no prosecution witness was present and again summons were issued. Thereafter again on 18.02.2022 the petitioner was produced by the jail authorities but no prosecution witness was present and again summons were issued. Thereafter on 11.03.2022 again the petitioner was produced but no prosecution witness was present and again summons to the prosecution witnesses were ordered to be issued. This happened again on 01.04.2022 when the petitioner was produced by the jail authorities but no prosecution witness was present and again summons were issued. Same kind of orders were again passed on 02.06.2022, 15.06.2022, 06.07.2022 and 29.09.2022 and in this way the matter was adjourned by the learned trial Court for 14 times but the prosecution witness did not even bother to step into the witness box for the purpose of deposing.

At the time of hearing, a specific query was put to the learned State counsel as to what was the justification as to why no prosecution witness has come to the Court for deposing despite the fact that the criminal law was set into motion by the police party itself and repeated summons were issued to them in the present

case and the matter was adjourned for fourteen times, the learned State counsel was not able to justify the same. The net result was that due to the conduct of the police officials, the petitioner who is having clean antecedents, has faced incarceration for about 2 years and 10 months. Right of liberty and speedy trial are precious rights which are to be preserved, protected and enforced. The law with regard to the aforesaid proposition has now been dealt with extensively by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 SCC Online SC 825.

Due to non appearance of the police officials which led to long incarceration of the petitioner for about two years and ten months, this Court has no option but to draw an adverse inference that there are *prima facie* reasons to believe at least at this stage that 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.

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 12, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No