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

CRM-M-45223-2022

Date of Decision: 07.12.2022

Baldev Singh @ Ballo

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Arora, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a sixth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.0072 dated 13.07.2019, under Sections 21 of the N.D.P.S. Act, 1985, registered at Police Station Jhabal, District Tarn Taran.

Learned counsel for the petitioner has submitted that this is a 6th successive bail petition. He referred to the orders passed by this Court in the earlier bail petition vide Annexures P-2 to P-6. His first bail petition was dismissed as withdrawn on 12.10.2020. Thereafter, he again withdrew his bail petition on 23.08.2021. Thereafter, he filed a petition for grant of interim bail which he also withdrew on 29.10.2021. His next bail petition was dismissed as withdrawn on 16.09.2022 and in between he also filed an application for grant of interim bail whereby he was granted permission to

attend the marriage of his sister under the police custody. The last bail petition which was withdrawn by the petitioner was on 16.09.2022. Learned counsel for the petitioner further submitted that although it is a successive bail petition filed by the petitioner but the facts of the present case regarding the stage of the trial would warrant consideration of bail petition which is a successive bail petition, and therefore, in view of the facts and circumstances, it would be maintainable.

Learned counsel for the petitioner also submitted that it is a case where as per the FIR, the police was patrolling and they saw the petitioner having a plastic bag in his hand, which he threw away and from where there was a recovery of 260 grams of *Heroin*. He further submitted that the petitioner is in custody from 3 years, 4 months and 26 days, which is almost 3½ years and the learned trial Court has framed the charges on 02.03.2020, which is more than 2 years and 8 months ago and till date not even a single prosecution witness has been examined. He has referred to all the interlocutory orders passed by the learned Special Judge vide Annexure P-7, to show that after framing of the charges on 02.03.2020 about 30 adjournments were granted wherein for number of times, the prosecution witnesses were summoned and even on two dates bailable warrants were issued against the prosecution witnesses but still they have not even cared to step into the witness box and depose. While referring to the aforesaid interlocutory orders, a perusal of the same would show that on the earlier some of the dates, the matter was adjourned because of the Covid-19 Pandemic, but even otherwise also from 12.01.2021, the matter was taken up by physical hearing and after this, there had been 22 adjournments by the

learned Special Judge, on the ground that the prosecution witnesses were not present and repeated summons were issued and thereafter, twice bailable warrants were issued. He further submitted that the criminal law was set into motion by the police and once the charges were framed, it was duty of the prosecution and the police to examine the witnesses, who are the prosecution witnesses and in the NDPS matters, mostly the witnesses are the official witnesses unless some independent witness or some other expert has to be examined as private witness. Allegedly, the police party has caught the petitioner but there is no justification as to why for 22 times, they did not step into the witness box and a period of 2 years and 8 months have elapsed after the framing of charges and consequence of that was that the petitioner has to face incarceration for about 3½ years for no fault of his and the delay was only because of the prosecution. Learned counsel further submitted that actually it was a case of false implication and even the nature and tenor of the FIR would show that it is a stereotyped FIR which the police normally makes in a large number of case to implicate the persons. 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, to contend that right to speedy trial is a Fundamental Right guaranteed under Article 21 of the Constitution of India and there should not be any unnecessary adjournment especially when the entire case rests upon the prosecution witnesses, who failed to depose before the trial Court for 2 years and 8 months without any justification which is led to the incarceration of the petitioner for large period of 3½ years. He also submitted that in the light of the aforesaid circumstances as well, the present

successive bail petition of the petitioner would be maintainable.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has submitted that it is correct that the petitioner has faced incarceration for about 3½ years and till now no prosecution witness has been examined despite the fact that the charges in the present case were framed on 02.03.2020. He has however submitted that on the earlier dates, the matter was adjourned because of the Covid-19 Pandemic but later on for number of times, prosecution witnesses were summoned but they had not stepped into the witness box. He has however pointed out that the petitioner is involved in four more cases out of which two pertains to the NDPS Act and they are of the years 2014 & 2016 besides two more cases, one is under Excise Act and another is under Sections 353, 186 323 & 506 IPC and all the cases are old cases from the year 2014-17 in which the petitioner is an undertrial but on bail.

On a query being raised to the learned State counsel as to what was the justification and as to why for 2 years and 8 months after the framing of the charges, not even a single prosecution witness has been examined, he was not able to justify the same.

I have heard the learned counsel for the parties.

It is a case where the petitioner has faced incarceration for about 3½ years and the charges in the present case were framed on 02.03.2020, which is almost 2 years & 8 months ago but no prosecution witness has been examined till date. A perusal of the interlocutory orders, which have been attached with the present petition by the petitioner would show that for about 30 times the matter was adjourned out of which for 7-8

times, the matter was adjourned due to Covid-19 Pandemic, but thereafter, about 22 times again the matter was adjourned by which repeatedly the prosecution witnesses were summoned and even on about two occasions, the learned Special Judge was also constrained to issueailable warrants against the prosecution witnesses. The present is a case pertaining to the NDPS Act. The prosecution witnesses in the present cases are normally official witnesses unless some independent witnesses are to be examined. The official witnesses, who allegedly apprehended the petitioner did not even care to depose before the Court for 2 years & 8 months after the framing of charges and no justification has come forth in this regard, and therefore, this Court would draw an adverse inference against the prosecution. Since the alleged confiscation from the petitioner was of 260 grams of *Heroin*, which falls in the category of commercial quantity, this Court would also consider the effect of Section 37 of the NDPS Act in the present case.

The facts and circumstances as stated above would suggest that the delay in the trial has been caused by the prosecution and not by the petitioner, who has faced incarceration for about 3½ years. No justification has come from the State counsel as to why and what prevented the official witnesses who had set the criminal law into motion to depose before the Court despite 30 adjournments after framing of charges out of which 22 were effective adjournment wherein for a number of times, summons were issued to the official witnesses includingailable warrants as well. The right to speedy trial is no doubt a Fundamental Right guaranteed under Article 21 of the Constitution of India and this aspect has been dealt by the Hon'ble

Supreme Court in *Satender Kumar Antil's case (supra)*. The facts and circumstances also suggest that successive bail petition of the petitioner would certainly be maintainable.

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 for the purpose of considering the effect of Section 37 of the NDPS Act. 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.

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 peculiar 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.

07.12.2022

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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