

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

258

CRM-M-53468 of 2022

Date of Decision:23.11.2022

Dalbir Singh @ Kalu

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present 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.274 dated 04.12.2018, under Section 22 of the NDPS Act, 1985, registered at Police Station Kotwali, Kapurthala.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 29.03.2022. He submitted that it is a case where as per the prosecution story, the police party was patrolling and they saw the petitioner, who on looking at the police party threw away the packet from his right pocket and thereafter the packet was confiscated in which 20 injections of Buprenorphine were recovered containing 2 ml each. He submitted that thereafter since the FSL report did not come, the petitioner was released on interim bail by

the learned Trial Court. He submitted that the petitioner, while on interim bail, was never informed with regard to the fact that the FSL report has come and thereafter when the FSL report was filed alongwith challan, the petitioner was absent because he was not taken for the purpose of submitting the challan. He submitted that the petitioner was in custody in some other case and thereafter when the case was taken up for consideration on framing of charges on 29.03.2022 he was produced on the basis of production warrant pertaining to some other case and that is why his total custody is about 10 months and 3 days. He has submitted that although the petitioner is involved in some other cases pertaining to small quantity under the NDPS Act but so far as the present case is concerned, the petitioner is entitled for the grant of bail on various grounds. Firstly, the alleged confiscation was of 20 injections of Buprenorphine of 2 ml each which comes to total of 40 ml, which is slightly higher than the commercial quantity under the NDPS Act. But since the petitioner was carrying the injections of Buprenorphine for medical purposes and for that purpose prescription is not required, he is covered under Rule 66 of the NDPS Rules and for that purpose, he is not required to have any medical prescription in this regard. He also relied upon a judgment of this Court in **Sukhwinder Singh @ Vicky v. State of Punjab 2021 (1) RCR (Crl.) 177** in this regard. Secondly, the alleged 20 injections of Buprenorphine were recovered from the ground even as per the prosecution story but thereafter the petitioner was searched personally also by ASI Rajinder Kumar, who was called by the other ASI namely Tarsem Singh, who had stopped the petitioner. He referred to Annexure P-6 to state that although he was searched personally but the provisions of Section 50 of the NDPS Act were not complied since no offer was given to the petitioner for

being searched either by a Magistrate or a Gazetted Officer. Thirdly, the charges in the present case were framed on 29.03.2022. Thereafter, the matter was adjourned from time to time for summoning of the prosecution witnesses but they failed to depose before the learned trial Court. During the course of arguments, learned counsel for the petitioner has supplied photocopies of the zimini orders which were passed by the learned trial Court after the framing of the charges. The charges were framed on 29.03.2022 and the matter was adjourned to 19.04.2022 and on that day, no PW was present. It was again adjourned to 10.05.2022 and it was observed by the learned trial Court that no PW is present and even the petitioner was not produced by the jail authorities, therefore, fresh summons were issued to the unexamined PWs and the matter was adjourned to 14.06.2022 and again the petitioner was not produced by the jail authorities and no PW was present. Therefore, again fresh summons were issued to the un-examined PWs. Thereafter the matter was adjourned to 05.07.2022 and on that date again no PW was present and the petitioner was not produced by the jail authorities. The learned trial Court observed that summons issued to PW ASI Rajinder Kumar have been received back duly served but he has not turned up and thereforeailable warrants were issued against him in the sum of Rs.5,000/- with one surety in the like amount and the remaining PWs were also summoned. Thereafter, on 26.07.2022 again no PW was present and the petitioner was again not produced by the jail authorities and even theailable warrants issued to PW ASI Rajinder Kumar received duly served but he still did not turn up and againailable warrants were issued against him in the sum of Rs.5,000/- and the remaining PWs were also summoned. Thereafter, on 16.08.2022 again the petitioner was not produced by the jail authorities and PWs

were summoned as per the previous order. Thereafter, on 21.08.2022 again the petitioner was not produced by the jail authorities and no PW was present and then for the third time, PW ASI Rajinder Kumar, who is the material witness in the present case, was again summoned through bailable warrants. On 19.09.2022, again the petitioner was not produced by the jail authorities and again no PW was examined and the PWs were again summoned. Yet again, for the fourth time on 10.10.2022 again no PW was present and PW ASI Rajinder Kumar was again summoned through bailable warrants. The matter was then fixed for 01.11.2022 and again the petitioner was not produced by the jail authorities and no PW was examined. Learned counsel for the petitioner submitted that for about 10 dates the matter was adjourned by the learned Special Court and it is very surprising that four times bailable warrants were issued against PW ASI Rajinder Kumar, who as per the prosecution, was the person who had confiscated 20 injections of Buprenorphine from the petitioner. He submitted that no justification is coming forward as to why the police personnel, who have themselves put the criminal law into motion failed to depose themselves before the Court with the result that the entire trial has been delayed for no fault of the petitioner. Learned counsel for the petitioner has referred to a latest judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 **AIR (SC) 3386** in this regard that such kind of adjournments should not be granted and it affects the right of speedy trial of the accused persons.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and it is also correct that for a number of times the matter was adjourned

from time to time by the learned Special Court but no PW was present however, yesterday one PW has been examined namely ASI Tarsem Kumar who had called the other ASI namely Rajinder Kumar but the aforesaid ASI Rajinder Kumar did not come forward for deposing despite the fact that four times bailable warrants were issued against him by the learned trial Court.

I have heard the learned counsel for the parties.

The factual position which has been stated by the learned counsel for the petitioner pertaining to absence of the material witness, namely, ASI Rajinder Kumar, who had allegedly confiscated 20 injections of Buprenorphine is not justified. On a specific query being raised to the learned State counsel during the course of arguments, as to what prevented the aforesaid officer who himself set the criminal law into motion from deposing in the Court despite the fact that four times bailable warrants were issued against him, learned State counsel could not give any justification with regard to the same.

The Hon'ble Supreme Court in **Satender Kumar Antil's** case (supra) has dealt specifically on these issues with regard to the speedy trial and repeated adjournments should not be granted. In NDPS matters, normally the witnesses are the official witnesses and specially those witnesses are the part of the police party apart from the other experts or independent witnesses, if any. Once the criminal law is set into motion by lodging of an FIR by the police personnel themselves, there is no justification for them to keep back and not depose before the Court when the court issued summons repeatedly to the official witnesses. Therefore, this Court deems it fit and proper to draw an adverse inference against the prosecution. Apart from the above, the alleged confiscation was only 20 injections of

Buprenorphine, the prayer of the petitioner would also be covered by the judgment of this Court in **Sukhwinder Singh**'s case.

Since the alleged recovery is pertaining to commercial quantity, this Court would consider the prayer of the petitioner in the light of Section 37 of the NDPS Act. The aforesaid facts and circumstances whereby number of times the prosecution witnesses were called and bailable warrants were issued four times, would make this Court to have reasons to believe at least at this stage that the petitioner is not guilty of offence. Furthermore, it has not been argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence. Therefore, both the ingredients of Section 37 of the NDPS Act making departure therefrom remain satisfied.

In view of the aforesaid facts and circumstances, this Court is of the considered view that the petitioner deserves the concession of regular bail. 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 expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

November 23, 2022

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