

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CRM-M-51590 of 2021
Date of Decision:10.10.2022

Dharmpreet Singh @ Dharma

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kashish Garg, Advocate, for
Mr. J.K. Singla, Advocate,
for the petitioner.

Mr. Amit Rana, Senior DAG, 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.91 dated 22.06.2021, under Sections 22, 25, 29 of the NDPS Act, registered at Police Station Bhikhi, District Mansa.

It has been submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is in custody from 22.06.2021, which is more than one year and three months. He submitted that as per the allegations the petitioner was allegedly caught on the basis of suspicion and there was an alleged recovery of 960 tablets consisting the salt of Tramadol while he was on his motorcycle. He submitted that after completion of the investigation, challan was presented to the

competent Court and thereafter the Judge, Special Court, Mansa framed the charges on 29.11.2021. Learned counsel submitted that it is more than ten months that despite repeated adjournments by the learned trial Court, no prosecution witness has appeared for the purpose of deposition. He submitted that it is a case under the NDPS Act where the witnesses are the official witnesses. The FIR was got registered at the instance of one ASI Kulwant Singh and the criminal law was set into motion by the police but the police officials themselves did not even chose to appear before the Court for a period of ten months wherein eight adjournments were granted by the learned trial Court by observing that no PW is present and on most of the dates the petitioner was produced before the Court. He further submitted that it is a case where the prosecution witnesses have not even cared to appear before the Court for a long period of ten months with the result that they have not been examined and the trial has been delayed considerably at the hands of the prosecution themselves. The learned counsel further submitted that the petitioner has clean antecedents and is not involved in any other case and even as per the allegations, no gazetted officer or Magistrate was called at the spot and on the ground that the petitioner had alleged given a consent memo and in this way the police has misused provisions of law and the petitioner has been falsely implicated in the present case. He has further submitted that there is no reason or justification coming forward as to why the police did not even care to step into the witness box despite eight adjournments being granted over a span of more than 10 months.

On the other hand, Mr. Amit Rana, learned Senior DAG, Punjab has stated that it is correct that the petitioner is in custody from 22.06.2021 and the

petitioner is having clean antecedents and is not involved in any other case. He also submitted that it is also correct that till date no prosecution witness has been examined despite the fact that the charges were framed on 29.11.2021.

I have heard the learned counsel for the parties.

During the course of arguments, learned counsel for the petitioner has supplied photocopies of the zimni orders with effect from 29.11.2021 and the same are taken on record as Mark-X. A perusal of the same would show that after the framing of the charges, about eight times the matter was adjourned by the learned Special Judge and all the orders show that no prosecution witness has been examined and they were repeatedly summoned which included ASI Kulwant Singh who was the author of the FIR and who allegedly conducted the raid. On a specific query being put to the learned State counsel as to what was the justification as to why more than ten months have elapsed and after eight adjournments no prosecution witness has deposed, the learned State counsel was not able to justify the same. When the matter pertains to offence under the provisions of the NDPS Act, the witnesses are the official witnesses who are the part of the police party and they are the persons who set the criminal law into motion and after the framing of the charges it becomes the duty of the prosecution witnesses which are the police party at least to come forward and depose before the Court. Repeated adjournments and repeated summoning by the trial Court would make this Court to draw an adverse inference with regard to the conduct of the police officials at whose hands the trial has been delayed with the result that the petitioner has faced incarceration for more than one year and three months. The petitioner is stated to be not involved in any other case even as per the learned State counsel. This Court would therefore

consider the effect of Section 37 of the NDPS Act in the light of the aforesaid facts and circumstances apart from making reference to the judgment of the Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 SCC Online SC 825, wherein the Hon'ble Supreme Court has discussed the effect of delay at the hands of the prosecution on the right of speedy trial.

This Court is of the considered view that considering the aforesaid facts and circumstances pertaining to the conduct of the police officials whereby they did not step forward for deposing before the learned trial Court despite eight adjournments and repeated summons being issued to them with the result that even till date no prosecution witness has been examined despite the fact that the charges were framed on 29.11.2021, coupled with the fact that the petitioner has clean antecedents and he is not involved in any other case, this Court has reasons to believe *prima facie* 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 in Section 37 of the NDPS Act is concerned, the petitioner is stated to be not 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 abscond from justice or may repeat an offence. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the Act stand 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 10, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No