

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

220

CRM-M-48169-2022

Date of Decision : **October 21, 2022**

RAKESH KUMAR @ KESHI

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. G.S.Sandhu, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, 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 grant of regular bail to the petitioner in case FIR No.46 dated 15.2.2020 under Section 22 of NDPS Act, registered at Police Station City Malout, Distt. Sri Muktsar Sahib.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody 15.2.2020 which is more than 2½ years i.e. about 2 years and 8 months. He submitted that the petitioner is not a habitual offender and is not involved in any other case and has clean antecedents. He further submitted that the present case was planted upon the petitioner and as per the allegations contained in the FIR, he was apprehended when the police party saw him alongwith the bag from where allegedly there was a recovery of 7000 tablets of tramadol. Learned counsel submitted that thereafter he was made to sign the consent memo where some Gazetted Officer/DSP was called but the

entire exercise was farce only for the purpose of implicating the petitioner in the present case.

Learned counsel further submitted that his submissions pertaining to false implication got fortified from the fact that after the completion of the investigation, the police presented the challan and thereafter the charges were framed on 5.3.2021. Thereafter the matter was adjourned from time to time and till date not even a single prosecution witness has been examined. He submitted that he has annexed all the *Zimni orders* as Annexure P-5 to show that after the framing of charges the matter was adjourned for 19 times and every time it was recorded that no prosecution witness is present and repeated summons were issued. He submitted that there was no justification whatsoever on the part of the police officials to have not deposed before the Court for a long period of 1½ years with a consequence that he has faced incarceration for about 2 years and 8 months. He further submitted that since it was a case under the NDPS Act where all the material witnesses are the official witnesses and the criminal law was set into motion by the police itself and there was no justification for the police to have absented themselves and not deposing before the Court for a long period of 1½ years despite 19 adjournments made by the learned Special Court. However, on one date one official witness was present but he also did not get himself examined and made an excuse to go out of station and consequently, no prosecution witness has been examined till date. The learned counsel relied upon the latest judgment of the Hon'ble Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation &**

Anr. 2022 AIR(Supreme Court) 3386.

On the other hand, the learned State counsel submitted that it is correct that the petitioner is in custody for 2 years and 8 months and the charges were framed on 5.3.2021 which is more than 1½ years but no prosecution witness has been examined till date. He also submitted on instructions from ASI Hira Singh that the petitioner is not involved in any other case. He has, however, opposed the grant of bail to the petitioner on the ground that since there was a recovery of 7000 tablets of tramadol which falls in the category of commercial quantity, the bar contained under Section 37 of NDPS Act will apply in the present case.

I have heard the learned counsels for the parties.

Some of the facts are not in dispute. Firstly, the petitioner is not involved in any other case and is not a habitual offender. Secondly, the charges in the present case were framed on 5.3.2021 and thereafter 19 adjournments were granted by the Special Court but no prosecution witness has been examined till date. The *Zimni orders* have also been attached alongwith the present petition.

In the cases especially under the NDPS Act when the criminal law was set into motion by the police authorities and the case is presented to the learned Court, mostly the witnesses are the official witnesses who are either a part of the police party or other forensic expert etc. and some times there are other independent and private witnesses. However, most of the prosecution story rests on the basis of the prosecution evidence by the official witnesses i.e. police party normally. The petitioner has no criminal background and he has alleged false

implication. When the charges have been framed by the Court and the matter has been adjourned for 19 times for recording of prosecution evidence but no prosecution witness has been examined there has to be some justification on the part of the police officials/prosecution to justify such a conduct. During the course of arguments, this Court has raised a specific query to the learned State counsel as to what was the justification for not stepping into the witness box for a long period of more than 1½ years which resulted in delay in the trial and long incarceration of the petitioner for 2 years and 8 months, the learned State counsel could not justify the absence of the prosecution witnesses who are the official witnesses. The Hon'ble Supreme Court in Antil's case (Supra) discussed the menace of delayed trial in detail. In the present case in view of the aforesaid facts and circumstances, this Court can safely draw an adverse inference against the prosecution.

This Court does not wish to make any observation on the merits of the case but solely for the purpose of considering the bail petition and considering the bar contained under Section 37 of NDPS Act the aforesaid facts and circumstances are imperative to be considered. On the basis of the aforesaid conduct of the police officials, this Court has, therefore, prima facie reasons to believe atleast at this stage that the petitioner is not guilty of the offence. Apart from the same, the petitioner is stated to be not involved in any other case whatsoever nor it is the case of the State nor it has been argued by 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 NDPS Act remain satisfied. Therefore, considering the aforesaid facts and circumstances and particularly the long custody of the petitioner of 2 years and 8 months, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

October 21, 2022

ajay-1

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No