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

**CRM-M-52794-2021 (O&M)
Date of Decision: 21.12.2022**

Bobby Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate,
for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.161 dated 29.07.2019, under Sections 22, 25 & 29 of the N.D.P.S. Act, 1985, registered at Police Station Sadar Jagraon, District Ludhiana (Rural).

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 29.07.2019, which is more than 3 years and 4 months. He further submitted that in the present case the allegations were that the police had apprehended the petitioner and the other two co-accused and there had been recovery of 24000 tablets of *Tramadol* from the dicky of the car. The petitioner was stated to be sitting on the rear seat of the car along with other co-accused, namely, Dheeraj Kumar and the 3rd co-accused, namely, Raj Kumar @ Raju was driving the car. He further submitted that

so far as the aforesaid two co-accused, namely, Raj Kumar @ Raju and Dheeraj Kumar are concerned, they filed bail petition before this Court and this Court had extended the benefit of regular bail to them on 24.02.2020 vide Annexure P-2. He also submitted that at that point of time the bail was extended on the basis of judgment of Hon'ble Supreme Court passed in "**Mohan Lal Vs. State of Punjab**", 2018(4) RCR (Criminal) 101, since in the aforesaid case, the complainant and the investigating officer were the same person. However, later on the legal position had changed and now even if the investigating officer and complainant is the same person that itself does not vitiate the trial *ipso facto*.

Learned counsel for the petitioner has further submitted that it is a case where the petitioner was falsely implicated in the present case which can be substantiated from the fact that the charges in the present case were framed on 08.10.2021 and thereafter, more than one year has elapsed but not even a single witness has been examined by the prosecution. He also submitted that it is a case under the NDPS Act wherein the official witnesses are the material witnesses unless some independent witness or some other expert has to be examined as private witness. He referred to the interlocutory orders (in CRM-44586-2022) which have been passed by the learned Special Judge, Ludhiana (Annexure A-24 to A-29, colly.) from where it can be seen that the learned Trial Court had adjourned the case for more than 15 times and the prosecution witnesses were served at the initial stage but they did not appear to step into the witness box and depose since because of the reason that it was a case of false implication of the petitioner. He further submitted that a perusal of the aforesaid zimni orders would

show that the official witnesses who are the part of the police party that whose instance, the criminal law was set into motion, did not appear despite bailable warrants were issued to them for 6 times and at one stage even non-bailable warrants were also issued by the learned Special Court but till date no witness has been examined nor did they come present in the Court and the matter was adjourned from time to time for this purpose, with the result that the petitioner had to face incarceration for 3 years and 4 months. 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, in this regard.

On the other hand, Mr. Jashandeep Singh, learned AAG, Punjab has submitted that it is correct that the petitioner has faced incarceration for more than 3 years and 4 months and till now no prosecution witness has been examined despite the fact that the charges in the present case were framed on 08.10.2021. He has however submitted that since the confiscated quantity falls in the category of commercial quantity, the bar under Section 37 of the NDPS Act will apply in the present case. He also submitted that the petitioner is also involved in one more case under the NDPS Act, in which, he stands convicted.

I have heard the learned counsel for the parties.

Undisputedly, the petitioner has faced incarceration for more than 3 years and 4 months and the charges in the present case were framed on 08.10.2021, which is almost 1 years & 2 months ago but no prosecution witness has been examined till date. The other two co-accused, namely, Dheeraj Kumar and Raj Kumar @ Raju have already been extended the

benefit of regular bail by this Court vide Annexure P-2. As per the FIR, three accused including the petitioner were got apprehended for possessing 24000 tablets of *Tramadol*. So far as the role of all the three accused is concerned, the same is at par with each other. However, the other two co-accused have been extended the benefit of regular bail by this Court in the year 2020 on the strength of judgment of Hon'ble Supreme Court passed in **Mohan Lal's case (supra)**, but the same proposition of law will not apply to the present petitioner in view of the latest judgment passed by the Hon'ble Supreme Court in “**Varinder Kumar Vs. State of Himachal Pradesh**”, **2019(1) RCR (Criminal) 1003**.

However, considering present petition for grant of regular bail on its own merits, the conduct of the police officials, who are the prosecution witness has to be seen in the light of the interlocutory orders passed by the learned Special Court vide Annexures A-24 to A-29 (colly.). A perusal of the same would show that for about 15 times, the prosecution witnesses were summoned out of which for six times bailable warrants were issued and for one time, non-bailable warrants were issued but these police officials, who were also part of the police party and had allegedly recovered contraband did not care to step into the witness box and depose for more than 1 year and 2 months. The consequence of the same was that the petitioner had to face incarceration for more than 3 years and 4 months. A perusal of the aforesaid zimni orders would show that the aforesaid delay has been caused by the prosecution witnesses and not by the petitioner. The Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)** had discussed in detail the scope of Article 21 of the Constitution of India *vis-*

a-vis, repeated adjournments have been granted especially when the prosecution witnesses are not examined and the relevant para of the aforesaid judgment is reproduced as under:-

“40. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own.”

Since the quantity involved in the present case falls in the

category of commercial quantity, the effect of Section 37 of the NDPS Act has to be considered in the peculiar facts and circumstances of this case. The aforesaid conduct of the police officials wherein they failed to depose and step into the witness box for long period of 1 year and 2 months after the framing of charges, despite 6 times bailable warrants and one time non-bailable warrants issued to them but till date no prosecution witness has been examined, therefore, this Court would draw an adverse inference against the prosecution.

Therefore, on the basis of the aforesaid conduct of the police officials and the facts and circumstances of the present case, especially when the learned counsel for the petitioner has pleaded that the petitioner has been falsely implicated, therefore, 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. The mere fact that the petitioner has been convicted in another case cannot become a bar for grant of regular bail to the petitioner in the present case.

In view of the aforesaid peculiar facts and circumstances of the case especially considering the long custody of the petitioner which is more than 3 years and 4 months, 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.

Since the main case has already been disposed of, therefore, all the pending applications stands disposed of.

21.12.2022

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

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