

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

CRM-M-55128-2022

Date of Decision: 29.11.2022

GURPREET SINGH ALIAS GOPI NIJHAR Petitioner

Versus

STATE OF PUNJAB Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. D.S. Gandhi, Advocate
for the petitioner.

Mr. Amish Sharma, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition is seeking direction to the Trial Court to conclude the Trial in a time bound manner in FIR No.133 dated 12.12.2018 registered under Sections 399 and 402 IPC 1860 and under Section 25 of Arm Act, at Police Station Lambran, District Jalandhar Rural (Annexure P-1).

A two Judge Bench of Hon'ble Supreme Court in Thana Singh Vs. State of Punjab (2013) 2 SCC 590 while dealing with different issues arising out of trials under different Acts especially under NDPS Act has observed with respect to adjournments as below:

“6. The lavishness with which adjournments are granted is not an ailment exclusive to narcotics trials; courts at every level suffer from this predicament. The institutionalization of generous dispensation of adjournments is exploited to prolong trials for varied considerations.

7. Such a practice deserves complete abolishment. The legislature enacted a crucial amendment in the form of a fourth proviso to [Section 309\(2\)](#) of the Code of Criminal

Procedure, 1973 (through [Section 21](#) (b) of Act 5 of 2009) to tackle the problem, but the same awaits notification. Once notified, [Section 309](#) will read as follows: -

“309. Power to postpone or adjourn proceedings.

(1) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him
Provided also that-

a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be

1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

[Emphasis supplied]

8. The fourth proviso deserves immediate notification. In lieu of the lacuna created by its conspicuous absence, which is interfering with the fundamental right of speedy trial [See: Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar[4]], something this Court is duty-bound to protect and uphold, and till the statutory provisions are in place, we direct that no NDPS court would grant adjournments at the request of a party except where the circumstances are beyond the control of the party. This exception must be treated as an exception, and must not be allowed to swallow the generic rule against grant of adjournments. Further, where the date for hearing has been fixed as per the convenience of the counsel, no adjournment shall be granted without exception. Adherence to this principle would go a long way in cutting short that queue to the doors of justice.

9. Perhaps, a provision analogous to [Section 22\(c\)](#) of the Prevention of Corruption Act, 1988 may be seriously

*considered by the legislature for trials under the NDPS Act.
It reads as follow:*

*“22. The Code of Criminal Procedure, 1973 , to apply
subject to certain modifications.- The provisions of the
Code of Criminal Procedure, 1973 (2 of 1974 .), shall
in their application to any proceeding in relation to an
offence punishable under this Act have effect as if,--
XXX XXX XXX*

*© after sub- section (2) of section 317, the following
sub- section had been inserted, namely:--*

*‘(3) Notwithstanding anything contained in sub- section (1)
or sub-section (2), the Judge may, if he thinks fit and for
reasons to be recorded by him, proceed with inquiry or trial
in the absence of the accused or his pleader and record the
evidence of any witness subject to the right of the accused to
recall the witness for cross- examination. ”*

This Court is sanguine that trial Court would endeavour to
dispose of the matter at the earliest.

Disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.11.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No