

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-50914 of 2019
Date of Decision:06.12.2022

Gagandeep Singh @ Gagan

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vivek K. Jindal, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

This is second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.75 dated 05.05.2018, under Sections 21/22/29 of the NDPS Act, 1985 registered at Police Station C Division, District Amritsar.

It has been submitted by the learned counsel for the petitioner that the petitioner has faced incarceration for about 1 year and 1½ months. He submitted that earlier the petitioner was granted interim bail by this Court on the ground that the FSL report had not been received but thereafter on the receipt of the FSL report he surrendered in time. He submitted that it is a case where the allegations against

the petitioner and the co-accused were that they were coming in a car and the police on seeing them stopped the car and the driver of the car fled away and other three persons came out of the car and as per the prosecution the petitioner was seen with a packet in a polythene bag which when the police tried to confiscate he tried to throw it away and from that packet there was a recovery of of 360 grams of heroin. He submitted that all the other three co-accused have already been released on bail by the learned trial Court and so far as the present petitioner is concerned, he is in custody from the last about 1 year and 1½ months.

Learned counsel for the petitioner supplied the photocopies of the interlocutory/zimini orders passed by the learned Judge, Special Court during the course of arguments which are hereby taken on record as Mark-X.

He submitted that the charges in the present case were framed on 02.01.2019 and thereafter the prosecution witnesses were not examined and the learned Judge, Special Court was constrained to issueailable warrants against some of the prosecution witnesses and now it is almost 4 years (3 years and 11 months) after the framing of the charges that only two witnesses have been examined by the prosecution and those two witnesses are not even the material witnesses because one witness is Deepika who is only an official who had taken the sample from the *Malkhana* to the FSL and was merely a formal witness and the other witnesses namely SHO Ravisher who has been examined was the incumbent SHO at that point of time but none of the persons who were the part of the police party on the basis of which the present FIR has been lodged and on the basis of which the criminal law has been set into motion cared to depose before the Court for a long period of four years and there is no justification for the same. He

submitted that the petitioner is not involved in any other case under the NDPS Act and the co-accused have already been released on bail. He further submitted that in this way over a period of four years, 24 adjournments were granted by the learned Judge, Special Court and out of those 24 adjournments, some of the adjournments were granted because of the Covid-19 pandemic but majority of the adjournments were granted prior to the onset of the Covid-19 pandemic and after February 2022 and submitted that no justification has come forward from the State in this regard as to why the material witnesses which are the part of the police party who had apprehended and allegedly recovered contraband from the petitioner did not depose. He also relied upon a judgment of the Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 AIR (SC) 3386 and submitted that right to speedy trial is a Fundamental Right under Article 21 of the Constitution of India and the practice of repeated adjournments, especially by the prosecution witnesses is also deprecated. He submitted that in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case and the petitioner is entitled for the grant of regular bail.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that the petitioner has faced incarceration for about 1 year and 1½ months and earlier he was granted interim bail but thereafter he surrendered although after a gap of some time. He has however opposed the grant of regular bail to the petitioner only on the ground that the prayer of the petitioner is hit the bar contained under Section 37 of the NDPS Act since the recovered quantity was 360 grams of heroin which falls under the category of commercial

quantity.

This Court during the course of arguments raised a specific query to the learned State counsel as to what was the justification as to why for a long period of four years after the framing of the charges, the prosecution witnesses have not been able to step into the witness box for deposing and only two formal witnesses have been examined whereas the material witnesses who were part of the police party and who actually brought the criminal law into motion absented themselves for 24 adjournments, the learned State counsel was not able to justify the same at all.

I have heard the learned counsel for the parties.

It is a case where the petitioner alongwith other three co-accused was apprehended but as per the learned counsel for the parties, the other three co-accused have already been extended the benefit of regular bail by the learned Judge, Special Court. The petitioner is stated to be not involved in any other case under the NDPS Act. However, as per the learned State counsel he is involved in one more case under Section 307 IPC in which he is under-trial. The charges in the present case have been framed on 02.01.2019 and thereafter 24 adjournments were granted by the learned Judge, Special Court including on some dates whereby evenailable warrants have been issued for compelling the police officials to appear before the Court. It is very surprising as to when the police itself has brought the criminal law into motion then the learned Special Court had to issueailable warrants against those police officials with the result that the entire trial got delayed and it is again shocking that after the framing of the charges, for almost 3 years and 11 months, no material witnesses have been examined and only those

two witnesses have been examined who were not the part of the police party who had allegedly apprehended the petitioner. The reliance placed upon the judgment of the Supreme Court in *Satender Kumar Antil's* case (supra) by the learned counsel for the petitioner is well founded. From the conduct of the prosecution, therefore this Court has *prima facie* reasons to believe at least at this stage that the petitioner is not guilty of the offence and so far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be not involved in any other case under the NDPS Act but he is an under-trial in one case under Section 307 IPC. It is not the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or he may abscond from justice or influence any witness. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances, particularly in view of the fact that about four years after the framing of the charges only two prosecution witnesses have been examined and the trial has got delayed at the hands of the prosecution but without the fault of the petitioner, 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 with the added condition that the petitioner shall surrender his passport before the learned Judge, Special Court, if he possesses the same and not deposited earlier either with the police or with the

Judicial *Malkhana* etc.

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

December 06, 2022

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