

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-538-2023 (O&M)
Date of Decision: 13.01.2023

Rajinder Kumar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.K. Khunger, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 0097 dated 07.08.2019, under Section 22 of NDPS Act, registered at Police Station Bahawala, District Fazilka.

The petitioner had filed first bail petition which was dismissed as withdrawn at that stage on 08.09.2020 and the second bail petition was also withdrawn on 07.09.2021 which is almost 1 year and 4 months ago.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 09.08.2019 which is almost 3 years and 5 months and the charges in the present case were framed on 20.12.2019 which is more than 3 years. He submitted that the present successive bail petition would be maintainable in view of the peculiar facts and

circumstances of the present case.

Learned counsel submitted that it is a case where allegedly the petitioner was apprehended by the police party consisting of Sub Inspector and other officers and allegedly there was a confiscation of 2000 tablets of Tramadol and 1220 tablets of Alprazolam which although falls in the category of commercial quantity under the NDPS Act but the bar contained under Section 37 of the NDPS Act would not apply to the petitioner in view of the facts and circumstances. He submitted that firstly the petitioner is having clean antecedents and is not involved in any other case and secondly, the conduct of the police officials who have themselves set the criminal law into motion have failed to depose before the trial Court for more than 3 years after the framing of the charges with a result that the petitioner had to face incarceration for about 3 ½ years for no fault of his. He referred to the zimmi orders which were passed by the learned trial Court vide Annexure P-4(Colly) to show that number of times the trial Court had to issue not only summons but also warrants against those police officials who had set the criminal law into motion themselves but they failed to appear and depose before the learned trial Court. He referred to the order dated 22.12.2021 wherein it was observed by the trial Court that no prosecution witness is present and PW DSP Sandeep Singh has sent a written request and he was bound down for 09.02.2022 and witnesses mentioned at Sr. No.1 and 3 were also summoned on that date. However, on 09.02.2022, it was observed by the trial Court that PW DSP Sandeep Singh was bound down for today but he did not come present and therefore, non-bailable warrants of arrests were issued against him for 06.04.2022.

Thereafter, on 06.04.2022 the aforesaid DSP was examined but no other prosecution witness was present and they were again summoned. Again on 01.06.2022 no prosecution witness was present and they were again summoned. Thereafter, on 22.08.2022 it was observed by the trial Court that PW ASI Kala Singh who was a part of the police party did not come present despite service and therefore, bailable warrants were issued against him for a sum of Rs,5,000/- with one surety in the like amount. Thereafter, again on 17.10.2022 non-bailable warrants of arrest were issued to the aforesaid Kala Singh. Thereafter, again on 15.12.2022 non-bailable warrants were issued against ASI Kala Singh and in this way for long period of more than 3 years after the framing of the charges number of times summons, bailable warrants and non-bailable warrants were issued and only one witness was examined who was DSP Sandeep Singh and this DSP is a person allegedly who was called on the spot in view of Section 50 of the NDPS Act. He further submitted that the material witnesses in the present case were the police party who had allegedly apprehended the petitioner on the spot but despite adjournments granted for three years they did not care to depose before the trial Court despite repeated summons, bailable warrants and non-bailable warrants issued to them. He has relied upon a judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]*** in this regard.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 09.08.2019 which is about 3 years and 5 months and charges have been framed on 20.12.2019 which is more than 3 years and it is also correct that

the petitioner is having clean antecedents and is not involved in any other case. She has opposed the grant of regular bail to the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

Although it is a successive bail petition filed by the petitioner but considering the aforesaid facts and circumstances wherein the petitioner has faced incarceration for about 3½ years and also the repeated adjournments granted by the trial Court because of inaction on the part of the police officials who are the material prosecution witnesses, this Court is of the view that the successive bail petition would be certainly maintainable.

The aforesaid facts and circumstances would suggest that when for more than 3 years after the framing of the charges, repeated adjournments have been granted by the trial Court wherein bailable warrants and even non-bailable warrants of arrest have been issued against the police officials who are those persons who had set the criminal law into motion and they themselves failed to appear before the trial Court for deposition which adversely affected the rights of the petitioner would therefore lead this Court to draw an adverse inference against the prosecution. Normally in the NDPS cases like the present case the official witnesses are the material witnesses unless there is some other private or expert witnesses. The trial Court had to issue repeated summons, bailable warrants and non-bailable warrants to those police officials who are the material witnesses but they did not care to appear before the trial Court for deposition. The net result of the same was that the petitioner had to face

incarceration for about 3 ½ years. During the course of arguments, a query was raised to the learned State counsel as to what was the justification for non-appearance of the prosecution witnesses, she was not able to justify the same. So far as the examination of one witness namely DSP Sandeep Singh is concerned, he was the person who allegedly was called in compliance with Section 50 of the NDPS Act but those material witnesses who were the part of the police had never cared to depose the before trial Court despite repeated summons, bailable warrants and non-bailable warrants of arrest were issued to them and for that there was no justification. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of Article 21 of the Constitution of India. Para 40 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”.

Apart from the above, the petitioner is stated to be not involved in any other case and is having clean antecedents. Therefore, the facts and circumstances of the present case would lead this Court to come to a *prima facie* view at this stage at least that the petitioner is not guilty of offence. Furthermore, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or abscond from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act stand satisfied.

In view of the aforesaid totality of facts 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, 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 meant for the purpose of deciding the present petition only.

13.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No