

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-159-2023 (O&M)
Date of Decision: 12.01.2023

Abhijeet Singh @ Babbu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. M.K. Singla, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 63 dated 07.06.2021, under Section 22 (C) of NDPS Act, registered at Police Station Nehianwala, District Bathinda.

Learned counsel for the petitioner has submitted that the present is a second bail petition filed for grant of regular bail to the petitioner and the earlier bail petition was withdrawn by the petitioner on 29.08.2022 at that stage. He submitted that the petitioner has been falsely implicated in the present case and the alleged recovery of 5000 tablets of Tramadol have been shown from him. He further submitted that it is a case where the contraband had been planted upon the petitioner which gets substantiated from the facts of the present case. He further submitted

that as per the prosecution the police when they were going from Bhokhra to Goniaana Main Road in connection with search of suspicious persons, then they came across the petitioner and from the diggy of his Aactiva, there was a recovery of 5000 tablets of Tramadol. The tablets were clearly visible in white colour bag and there was no number plate on the Aactiva. The complaint was made by ASI Rajvir Singh who allegedly intercepted the petitioner and on whose behest the present FIR was lodged. The information was sent to SI Harjiwan Singh who ultimately became the Investigating Officer in the present case.

Learned counsel submitted that the petitioner was arrested on 07.06.2021 which is more than 1½ years and the trial Court framed the charges on 24.11.2021 which is more than 1 year. He referred to some of the orders which have been passed by the learned trial Court vide Annexure P-1 to P-3 to show that in January, 2022 the I.O. Namely SI Harjiwan Singh was served but he did not come present despite service and therefore, bailable warrants were issued against him in the sum of Rs. 5,000/- with one surety of the like amount. Earlier bailable warrants were also issued to the complainant ASI Rajvir Singh which remained unexecuted. In this way, immediately after the framing of the charges right from the beginning the material witnesses who set the criminal law into motion i.e. the complainant and the Investigating Officer were duly served by the learned trial Court and now more than one year has elapsed and they did not care to depose before the learned trial Court and while referring to Annexure P-2 dated 22.03.2022 the learned trial Court again summoned ASI Rajvir Singh through non-bailable warrants and SI Harjiwan Singh was again summoned through

bailable warrants. Thereafter, vide Annexure P-3 on 23.11.2022 as well, it was observed by learned trial Court that bailable warrants sent to SI Harjiwan Singh had been received back duly executed but he did not come present despite service and therefore, his personal bond was forfeited to the State and he was summoned through non-bailable warrants. It was further observed by trial Court that non-bailable warrants sent to ASI Rajvir Singh have been received back unexecuted and bailable warrants were again issued to him. Learned counsel submitted that the fact that the case was planted upon the petitioner gets substantiated from the conduct of the police officials who themselves set the criminal law into motion but failed to appear before the trial Court for more than one year despite number of times bailable warrants and non-bailable warrants issued against them and there is no justification for the same. 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. He submitted that although the petitioner is involved in two more cases under the NDPS Act but in the present case 5000 tablets of Tramadol have been planted upon the petitioner only because of the fact that he was earlier involved in two more cases. He submitted that although the alleged recovery falls in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply in the present case because of the aforesaid facts and circumstances.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 07.06.2021 which is more than 1 ½ years and charges have been framed on 24.11.2021 which is more than 1 year. She submitted that now two

witnesses have been examined i.e. one ASI Baldev and Senior Constable Jarnail Singh. 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.

At this stage, learned counsel for the petitioner has submitted that so far as the aforesaid two witnesses as stated by learned State counsel are concerned, they were not even material witnesses and only formal witnesses. So far as ASI Baldev Singh is concerned, he was the person who had only put unique code on the sample and so far as Senior Constable Jarnail Singh is concerned, he was a messenger who took the sample to the FSL Laboratory but those who are the material witnesses and who had actually brought the criminal law into motion qua the petitioner failed to depose despite repeated warrants issued against them.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for more than 1½ years. Charges were framed on 24.11.2021 which is more than 1 year but as per the zimni orders attached with the present petition and as stated by the learned counsel for the petitioner, repeatedly bailable and non-bailable warrants were issued against those witnesses who actually brought the criminal law into motion i.e. the complainant and the Investigating Officer. On a query being raised to the learned State counsel as to what was the justification for the same, she could not give any justifiable explanation as to why the material witnesses did not depose before the learned trial Court for more than 1 year despite being served at the initial stages and despite the fact that bailable and non-bailable warrants were issued against them. 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”.

Despite repeated adjournments, bailable and non-bailable warrants being issued by the learned trial Court, the Investigating Officer and the complainant did not care to depose before the Court, with a result that the petitioner had to face incarceration for more than 1½ years without his fault. Therefore, drawing an adverse inference against the prosecution, this Court has *prima facie* reasons to believe at this stage at least that the petitioner is not

guilty of offence. Apart from the above, 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. The mere pendency of two more cases against the petitioner cannot become a ground for denial of bail to the petitioner. Therefore, the twin conditions for making a departure from the bar contained under Section 37 of the NDPS Act stand satisfied. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply in the present case.

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.

12.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No