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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2966-2023 (O&M)
Date of Decision: 24.01.2023

Visavjeet @ Sattu

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Neeru Bansal, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

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. 347 dated 30.07.2019, under Section 20 of NDPS Act, registered at Police Station Ganaur, District Sonapat (Haryana).

Learned counsel for the petitioner has submitted that the petitioner had filed a bail petition before this Court in CRM-M-53110-2019 which was dismissed by this Court on 12.02.2020. She submitted that now the total custody of the petitioner is from 30.07.2019 which is about 3 ½ years and has submitted that the alleged recovery from the petitioner was 2 Kg. and 100 grams of *Charas* whereas the commercial quantity under the NDPS Act is 1 Kg. She submitted that in fact the prosecution evidence was completed wayback on 22.03.2022 vide Annexure P-16 and the matter

was fixed for recording of the statement under Section 313 Cr.P.C but thereafter the prosecution filed an application under Section 311 Cr.P.C due to which there was a delay in trial for another period of one year. She submitted that in this way the petitioner had to face to incarceration for 3 ½ years and the trial is still not likely to be concluded in near future. She further referred to Annexure P-20 to show that even after application under Section 311 Cr.P.C was allowed, PW SI Suresh Chander did not turn up before the Court despite the fact that even bailable warrants were issued and thereafter even the DSP was summoned again but also did not appear despite repeated adjournments granted by the trial Court. She submitted that accute prejudice has been caused to the petitioner in view of the aforesaid facts and circumstances. She 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.

Ms. Nidhi Garg, learned Assistant Advocate General, Haryana has submitted that it is correct that the petitioner is in custody for 3 ½ years and the allegation against the petitioner was pertaining to recovery of 2 kg. and 100 grams of *Charas*. She submitted that it is also correct that the prosecution had completed the evidence but thereafter an application under Section 311 Cr.P.C was moved for recalling of the witnesses. She has however opposed the grant of bail to the petitioner on the ground that the recovery from the petitioner falls in the category of commercial quantity under the NDPS Act and the petitioner is also involved in four other cases of similar nature.

I have heard the learned counsel for the parties.

Although earlier bail petition of the petitioner was dismissed by this Court on 12.02.2020 but almost 3 years have elapsed and therefore, considering the custody of the petitioner the successive bail petition would certainly be maintainable.

The petitioner has faced incarceration for about 3 ½ years and it appears that the trial has been delayed because of application filed by the prosecution under Section 311 Cr.P.C after the prosecution evidence was completed. From the persual of the order Annexure P-20 it can be seen that even the prosecution witnesses who were recalled after allowing of the application under Section 311 Cr.P.C their presence were sought to be secured through issuance ofailable warrants. Therefore, it appears that the delay in the trial has not been caused by the petitioner but it has been caused because of the prosecution.

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”.

In view of the aforesaid facts and circumstances wherein even when the prosecution evidence was closed and thereafter again the police officials who were the prosecution witnesses did not turn up despite being served and the Court had to issue bailable warrants against them with a result that the trial has been delayed, this Court would therefore draw an adverse inference against the prosecution and that would lead this Court to come to a *prima facie* view at this stage at least that the petitioner is not guilty of offence for the purpose of considering the effect of Section 37 of the NDPS Act. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the State nor it has been argued by the learned 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 of the present case and considering the long custody of the petitioner which is about 3 ½ years, 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.

24.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No