

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3746-2023 (O&M)

Date of Decision: 24.02.2023

SUKHWANT SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Prateek Pandit, Advocate, for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 284 dated 08.10.2020, under Section 15 (c) of NDPS Act, registered at Police Station Shahkot, District Jalandhar (Rural).

Learned counsel for the petitioner has submitted that the petitioner is in custody from 08.10.2020 which is more than 2 years and 4 months. He submitted that in the present case after completion of the investigation, the challan was presented before the competent Court and thereafter charges were framed on 25.02.2021 which is about 2 years ago. He submitted that the petitioner was falsely implicated in the present case in view of the fact that earlier he was involved in one case under the Excise Act and one under Section 279 IPC and the police has falsely implicated him in the present case by alleging that there had been a recovery of 2 quintal of poppy

husk from him and the co-accused. He submitted that the fact that the petitioner has been falsely implicated in the present case can be substantiated from the zimni orders which have been passed by the trial Court after the framing of the charges regarding which photocopies have been supplied to this Court. The aforesaid photocopies are hereby taken on record as Mark-X. He submitted that a perusal of the zimni orders after the framing of charges on 25.02.2021 would show that 28 times the matter was adjourned and the prosecution witnesses were being summoned right from the beginning and some of them served also. He submitted that one prosecution witness namely SI Surinder Kumar was examined-in-chief way back on 04.10.2021 and till date he has not been cross-examined and rather for a number of times thereafter he was summoned and even bailable warrants were also issued. He further submitted that similarly another prosecution witness namely ASI Balwinder Singh was also examined-in-chief on 26.10.2022 but thereafter he did not turn up for cross-examination and thereafter for a number of times, he was summoned and again summons were issued to him through SSP, Jalandhar as well as through the concerned SHO. Similarly bailable warrants were also issued to PW ASI Satnam Singh. In this way for a number of times bailable warrants were issued to the prosecution witnesses for deposing before the Court and coming for cross-examination. He submitted that the criminal law was set into motion by the police officials who are prosecution witnesses since the matter pertains to NDPS Act and there is no justification as to why for 2 long years after the framing of the charges, they did not come up for deposing before the Court and especially that when they were examined-in-chief and thereafter the Court was constrained to issue bailable warrants and also repeated summons were issued for securing their presence for cross-examination and

therefore the conduct of the police officials would show that the petitioner was falsely implicated in the present case. He submitted that now the custody of the petitioner is very long which is more than 2 years and 4 months and the long custody is not because of any fault of the petitioner but because of the fault of the prosecution witnesses. 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 considering the aforesaid facts and circumstances the rigor of Section 37 of the NDPS Act will not apply in the present petitioner.

On the other hand, Ms. Anju Sharma Kaushik, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 08.10.2020 which is more than 2 years and 4 months and charges were framed two years ago on 25.02.2021 and now only two witnesses have been examined. She has however 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.

The petitioner has faced incarceration for more than 2 years and 4 months. Charges were framed on 25.02.2021 which is 2 years ago and only two witnesses have been examined. As per the zimni orders for a number of times the prosecution witnesses were summoned and repeatedly bailable warrants were issued. Two prosecution witnesses who were even examined-in-chief at earlier stages were again summoned repeatedly for the purpose of cross-examination. During the course of arguments, a query was raised to the learned State counsel as to what was the justification with regard to the aforesaid position that the prosecution witnesses had to be summoned by the

trial Court by way of bailable warrants repeatedly and some time summons through the SSP and the SHO to which after receiving instructions from the official present in the Court, she submitted no justification is coming forth in this regard. 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 the aforesaid circumstances the petitioner has already faced incarceration for more than 2 years and 4 months and the prosecution

witnesses did not turn up repeatedly even when they were bound down or even when repeatedly bailable warrants were issued or summons were also issued through the SSP and the SHO and no justification has come forth as to what was the reason with regard to the same. Therefore, this Court has no option but to draw an adverse inference against the prosecution at least at this stage for the purpose of considering the grant of regular bail to the petitioner especially considering the total custody of the petitioner. Although the alleged confiscation falls in the category of commercial quantity but the aforesaid peculiar facts and circumstances would lead this Court to come to a *prima facie* view at this stage at least that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained Section 37 of the NDPS Act is concerned, 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 above and considering the peculiar facts and circumstances of the present case whereby the custody of the petitioner is more than 2 years and 4 months and the prosecution witnesses are not appearing despite repeatedly bailable warrants and summons issued to them, this Court deems it fit and proper to grant regular bail to the petitioner especially in the light of Article 21 of the Constitution of India.

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.

24.02.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No