

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.8195 of 2023 (O&M)
Date of Decision: 15.03.2023

Angrej Singh @ Geja
..... Petitioner
V/s.
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shivender Pal Singh, Advocate for
Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.97 dated 15.06.2020, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City South, District Moga.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for 02 years 09 months and the allegations against the petitioner are that there was a recovery of 1600 tablets of Clovidol-SR-100 containing the salt of Tramadol Hydrochloride which falls in the category of commercial quantity but in the present facts and circumstances of the case, the petitioner is entitled for the grant of bail. He submitted that the petitioner was arrested on 15.06.2020 and the investigation of the case is complete and thereafter the trial Court has framed charges on 27.01.2021 and more than 2 years have elapsed after the framing of the charges that only 03 witnesses have

been examined in the present case, out of the total cited 14 witnesses. He has submitted that infact the petitioner was falsely implicated and he is not involved in any other case. He further submitted that as per prosecution the petitioner was apprehended by police party and thereafter one DSP-Barjinder Singh was called who had made an offer under Section 50 of the NDPS Act to which the petitioner acceded that he can be searched by the said Officer. He further submitted that after the framing of the charges, the matter was adjourned by the trial Court for number for times and he has reproduced all the zimni orders with the present petition whereby it can be seen that for number of times,ailable warrants were issued against prosecution witnesses who were the Police officials and who had set the criminal law into motion. While referring to one of the orders dated 07.09.2021, it is submitted that even the DSP who had made an offer under Section 50 of the NDPS Act even as per the prosecution, did not appear despite summons and qua him, the trial Court was constrained to issueailable warrants and even for the other witnesses as well, repeatedlyailable warrants were issued.

Learned counsel for the petitioner submitted that in the present case the petitioner has been falsely implicated and the aforesaid DSP who is the material witness has failed to depose and there is no justification as to why he has failed, despite the fact he was served and the learned trial Court was constrained to issueailable warrants against him. Learned counsel for the petitioner submitted that the petitioner has clean antecedents and is not involved in any other case and because of false implication, the petitioner had to face incarceration for 02 years 09 months for no fault of his and it was only because of the fault of the prosecution that the trial has been delayed and therefore the rigor of Section 37 of the NDPS Act would not apply to the present petitioner.

Learned counsel also referred to a judgment of Hon'ble the Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51] to contend that repeated adjournments by the trial Courts affect the fundamental rights of the accused person(s) under Article 21 of the Constitution of India.

On the other hand, learned State counsel on instructions has submitted that it is correct that the petitioner is in custody for 02 years and 09 months and charges were framed on 27.01.2021 and only 03 witnesses have been examined. She also submitted that the petitioner is not involved in any other case. However, she opposed the grant of bail to the petitioner on the ground that the recovery of 1600 tablets of Clovidol-SR-100 containing the salt of Tramadol Hydrochloride falls in the category of commercial quantity.

I have heard learned counsel for the parties.

It is a case where the petitioner has faced incarceration for 02 years and 09 months and more than two years have elapsed after framing of charges but only 03 witnesses have been examined. However, a perusal of zimni orders reproduced by the petitioner in the petition itself would show that repeatedly learned trial Court had issuedailable warrants to those police officials who had set the criminal law into motion. A perusal of the order dated 07.09.2021 would show that even the DSP also did not appear despite being served before the trial Court and the trial Court was constrained to issueailable warrants against him. During the course of arguments, a specific query was raised to the learned State counsel as to what was the justification as to why the prosecution witnesses who had set the criminal law into motion, are not deposing before the Court despiteailable warrants, she was not able to offer any explanation with regard to the same. The net result of the same is that

the petitioner had to face incarceration for 02 years and 09 months.

The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has considered the sensitive issue pertaining to 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 above peculiar facts and circumstances of the present case whereby the petitioner has already faced incarceration for 02 years and 09 months would lead this Court to have a prima facie reasons to believe at this stage that the petitioner is not guilty of offence, for the purpose of

considering the case of the petitioner for grant of regular bail. 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 have clean antecedents and is not involved in any other case and although the alleged recovery in the present case, of 1600 tablets of Clovidol-SR-100 containing the salt of Tramadol Hydrochloride. 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 may abscond from justice.

In view of the aforesaid facts and circumstances of the present case and in the light of Article 21 of the Constitution of India, 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.

15th March, 2023

Sonia Puri

**(JASGUPREET SINGH PURI)
JUDGE**

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