

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

207

**CRM-M-4180-2023
Date of decision: 02.02.2023**

Chamkaur Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kanwar Inder Singh, Advocate and
Ms. Jasleen Kaur, Advocate
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.30 dated 23.02.2020 lodged under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station City Rampura, District Bathinda.

Learned counsel appearing for the petitioner submits that a false and fabricated case has been foisted upon the petitioner for allegedly being found in possession of 1000 tablets of Clavidol 100 SR. He submits that the petitioner has been in custody for almost 03 years having been arrested on 23.02.2020 and till date only charges have been framed, which too were framed about two years back. Learned counsel has invited the attention of this Court to the zimni orders which have been annexed as Annexures P-4 and P-5 to contend that the trial is being delayed for no fault on the part of the petitioner and a perusal of the zimni orders clearly reveal that despiteailable warrants issued to

secure the presence of the prosecution witnesses, they have not been putting in appearance for getting themselves examined before the Trial Court. Learned counsel has submitted that the petitioner does not have a criminal past and is not involved in any other criminal case much less under the NDPS Act and even the recovery effected from him is marginally higher than the minimum prescribed under the commercial quantity. It has also been submitted that co-accused Jagsir Singh @ Gogi has since been extended the concession of bail by this Court vide order dated 15.11.2022 (Annexure P-6).

Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel appearing for the petitioner, has not been able to dispute the submissions made by learned counsel appearing for the petitioner that similarly situated co-accused has been granted the concession of bail by this Court, and also that the petitioner is not involved in any other criminal case. Learned State counsel has also not been able to controvert the submissions made by the counsel opposite that after the charges were framed on 15.03.2021, the trial had come to a virtual standstill on account of the non-appearance of the prosecution witnesses despite they having been repeatedly summoned throughailable warrants.

I have heard learned counsel for the parties and perused the material placed on record.

The petitioner has been in custody since 23.02.2020. As per instructions received by the learned State counsel as many as 23 prosecution witnesses have been cited by the prosecution. It is evident from a perusal of the zimni orders which have been annexed with the

petition and as also not controverted by the learned State counsel that the conclusion of the trial has been delayed on account of the non-appearance of the prosecution witnesses. In the circumstances, this Court cannot let the petitioner languish in custody for an indefinite period to await the appearance of the prosecution witnesses to get their evidence recorded. Right to life and personal liberty granted by the Constitution of India also covers the right to speedy trial. The learned Trial Courts in such like situations should not hesitate in resorting to coercive steps by issuing non-bailable warrants through the Senior Superintendent of Police concerned against such police officials for securing their presence as witnesses.

Therefore, in the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner as the trial has been delayed for reasons not attributable to him. The instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

Before parting, this Court is constrained to observe that despite the prosecution having been time and again admonished by this Court, the prosecution witnesses particularly in cases under the NDPS Act have not been appearing before the Trial Court for recording their evidence as a result thereof the trials are getting unnecessarily delayed. The Trial Court as well as the undertrials have been virtually left at the mercy of the prosecution. It is a matter of record that on a number of occasions, senior police officials including the Senior Superintendent of

Police of different districts of State of Punjab have been called to this Court and directed to look into this lackadaisical approach on the part of the prosecution witnesses most of whom admittedly are police officials. However, inspite of assurances given by these officers that they would take corrective measures to ensure the presence of the prosecution witnesses to get their evidence recorded as and when summoned by the Trial court, it has failed to yield any positive result. In this background, this Court has no hesitation in observing that either the senior police officials have been ineffective in ensuring the presence of the official witnesses in Court for evidence or the only other inference that can be drawn is that there is an unholy nexus between the police officials and the accused, so as to create a ground for the undertrials to be released on bail on account of their long incarceration. This Court would no longer remain a helpless spectator.

A copy of this order be sent to the Principal Secretary (Home), Punjab as well as the Director General of Police, Punjab to enable them to take corrective measures in the light of the observations made above. It is expected that the State authorities will at last wake up from their slumber. It is all the more imperative for the State to look into the above as it is no secret that the menace of drug trafficking has assumed alarming proportions.

The petition stands disposed of in the above terms.

02.02.2023

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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