

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-7673 of 2023 (O&M)

Date of Decision:17.02.2023

Hakam Singh @ Pappu

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Chandan Singh Rana, Advocate,
for the petitioner.

Ms. Lavanya Paul, 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.25 dated 13.03.2021, under Section 22(C) 61-85 of the NDPS Act, registered at Police Station Badhni Kalan, District Moga.

It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 13.03.2021, which is almost 1 year and 11 months. He submitted that after completion of the investigation, the final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court and thereafter charges in the present case were framed by the learned Special Judge on 24.08.2021, which is almost 1½

years ago. He submitted that the petitioner has clean antecedents and is not involved in any other case. He also during the course of arguments, has referred to the zimni orders passed by the learned Special Judge, Moga whereby after the framing of the charges, the case was adjourned for about 15 times and a perusal of the order dated 15.09.2021 would show that the prosecution witness SI Dilbagh Singh had been duly served and an order dated 27.10.2021 would show that the aforesaid prosecution witness failed to appear despite being bound down and therefore the trial Court was constrained to issueailable warrants against him in the sum of Rs.5000/- with a surety in the like amount. Thereafter, for number of times the prosecution witnesses were summoned but they failed to depose before the trial Court. Although one prosecution witness namely ASI Satnam Singh who was heading the police party has already died as per the order dated 23.09.2022 but a perusal of the other orders would show that even non-ailable warrants were issued against the prosecution witnesses namely SI Dilbagh Singh. The aforesaid zimni orders which have been passed by the learned trial Court are taken on record as Mark-X.

Learned counsel for the petitioner further submitted that although there was an alleged recovery from the petitioner to the tune of 2510 tablets of Tramadol which 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 due to the peculiar facts and circumstances of the present case and the present case has been planted upon the petitioner and that is the reason as to why the prosecution witnesses have failed to depose before the learned trial

Court despite the fact that the charges were framed about 1½ years ago and the trial Court was constrained to issueailable warrants and even non-ailable warrants against the prosecution witnesses. He further submitted that one of the prosecution witnesses SI Dilbagh Singh was rather served at the initial stage and he till date has not appeared despiteailable and non-ailable warrants being issued against him.

Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case gets substantiated from the conduct of the police officials. He also referred to a latest judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 (10) SCC 51 to contend that repeated adjournments of such kind wherein evenailable warrants and warrants of arrest are issued against the investigating officer prejudices the rights of the accused and in the present case the petitioner has been forced to face incarceration for more than 1 year and 11 months due to no fault of the petitioner and only because of the fault of the police officials who have set the criminal law into motion themselves. He has therefore prayed that the petitioner may be considered for the grant of regular bail.

On the other hand, Ms. Lavanya Paul, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for about one year and eleven months and the charges in the present case were framed on 24.08.2021 but till date only one prosecution witness has been examined. On a query being raised to learned State counsel as to who was the witness who has been examined, she tried to seek instructions from ASI Tarsem Singh who is

present in Court, but he was unable to answer. She has however submitted that the petitioner is not involved in any other case but has opposed the grant of bail to the petitioner on the ground that the prayer of the petitioner would be hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

The petitioner is stated to be in custody for about 1 year and 11 months and he has clean antecedents and is not involved in any other case. The charges in the present case were framed on 24.08.2021 and no prosecution witness has been examined till date as per the learned counsel for the petitioner but as per the learned State counsel, one prosecution witness has been examined but no details have been given to the Court in this regard. The quantity involved in the present case falls within the category of commercial quantity under the NDPS Act. Therefore, this Court would consider the prayer of the petitioner in the light of Section 37 of the NDPS Act.

The Hon'ble Supreme Court in *Satender Kumar Antil's* case (supra) had discussed various effects of repeated adjournments in the light of Article 21 of the Constitution of India. The relevant portion of 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 present case, the petitioner was allegedly caught alongwith 2510 tablets of Tramadol which falls within the commercial quantity under the NDPS Act.

In cases of such like nature under the NDPS Act, the prosecution witnesses are normally the official witnesses unless some other private witnesses are required to be examined being independent witness etc. The criminal law was set into motion by the police officials who are supposed to depose before the Court. It is not a case that for 2-4 times that the prosecution witnesses have failed to appear due to some reasons beyond their control but it is a case where 15 times the trial court had adjourned the case and one of the prosecution witness was summoned at the initial stage and the Court was

constrained to issue bailable and non-bailable warrants against those official witnesses who are none others but the officials who had set the criminal law into motion. On a query being raised to learned State counsel during the course of arguments as to what was the justification for their failure to depose, the learned State counsel was not able to justify the same.

Therefore, in view of the aforesaid conduct of the prosecution witnesses, this Court has no other option but to draw an adverse inference against the prosecution at least at this stage for the purpose of consideration of the prayer for regular bail only.

The facts and circumstances of the present case would lead this Court to have reasons to believe that the petitioner is not guilty of the offence.

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 learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice or influence the witnesses especially in view of the fact that the petitioner has clean antecedents and is not involved in any other case. Hence, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied and therefore the bar contained under Section 37 of the NDPS Act will not apply in the present case.

In view of the aforesaid facts and circumstances and also considering the long custody of the petitioner, this Court is of the view that the petitioner deserves the concession of regular bail. 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.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

February 17, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No