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

CRM-M-8196-2023

Date of Decision: 21.02.2023

Rajinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nigam K. Bhardwaj, Advocate for
Mr. C.S. Bahia, Advocate,
for the petitioner.

Ms. Lavanya Paul, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.21 dated 21.03.2021, under Section 22(c) of the N.D.P.S. Act, 1985, registered at Police Station Nandgarh, District Bathinda.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 21.03.2021, which is 1 year and 11 months and the charges in the present case were framed on 01.09.2021, which is almost 1 year and 5 months ago and till date no prosecution witness has been examined. He further submitted that the petitioner is having clean antecedents and is not involved in any other case. He also submitted that in the present case, there had been an alleged recovery of 7500 tablets of *Tramadol* from the petitioner which although falls in the category of

commercial quantity, but the petitioner has been falsely implicated in the present case. He further submitted that earlier the petitioner had filed a bail petition before this Court which was dismissed as withdrawn but at that point of time, the zimni orders passed by the learned trial Court were not brought to the notice of the Court. He also submitted that in fact after the framing of the charges on 01.09.2021, there had been about 25 adjournments by the learned trial Court with repeatedly summoning the prosecution witnesses for more than 20 times.

The copy of the zimni orders which has been produced by the learned counsel for the petitioner in Court today, are hereby taken on record and marked as 'X'.

Learned counsel for the petitioner further submitted that the prosecution witnesses in the present case which pertains to the NDPS Act, are those persons who are the police officials, who had set the criminal law into motion and for more than 20 times, they have been repeatedly summoned by the learned trial Court but they did not care to depose and till date, no witness has been examined despite the fact that almost 1 year and 5 months have elapsed after framing of the charges and despite repeated summons they have not cared to depose before the Court with the result that the petitioner, who is having clean antecedents and is not involved in any other case, had to face incarceration for 1 year and 11 months for no fault of his. Learned counsel for the petitioner submitted that the Hon'ble Supreme Court in “**Satender Kumar Antil Vs. Central Bureau of Investigation and another**”, **2022(10) SCC 51**, dealt with the serious issue of repeated adjournments and its effect upon the right to life under Article 21 of the Constitution of India. He further submitted that in view of the aforesaid

facts and circumstances especially considering the conduct of the police officials, who did not care to depose before the Court for long time and also considering the long custody of the petitioner which comes out to be 1 year and 11 months, he may be considered for the grant of regular bail and considering the aforesaid facts and circumstances, the rigor of Section 37 of the NDPS Act will not apply in the present case.

On the other hand, Ms. Lavanya Paul, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for a period of 1 year and 11 months and he is not involved in any other case. She further submitted that although after the framing of the charges on 01.09.2021, no prosecution witness has been examined but the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act, and therefore, he does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 1 year and 11 months. The charges in the present case were framed on 01.09.2021, but till date none of the prosecution witness has been examined. The petitioner is stated to be having clean antecedents and is not involved in any other case. The alleged recovery from the petitioner is falling in the category of commercial quantity, and therefore, the effect of bar contained under Section 37 of the NDPS Act has to be considered.

During the course of arguments, this Court had raised a query to the learned State counsel that as to what was the justification that for more than 20 times the Court had to summon the police officials, repeatedly for recording of the statement, who had set the criminal law into motion and they failed to appear before the Court to which she has stated on

instructions from ASI Jasvir Singh, who is present in the Court today that no justification is coming forth with regard to the same.

The Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* had discussed this issue with regard to the repeated adjournments and its effect upon the right to life of an accused person. Para No.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 facts and circumstances of the present case, the petitioner, who is stated to be not involved in any other case and has faced incarceration for 1 year and 11 months, is seeking a regular bail from this Court. A perusal of the zimni orders which have been produced by the learned counsel for the petitioner would show that for about 25 times the trial Court has adjourned the case after the framing of the charges and for about 20 times, repeated summons were issued to the prosecution witnesses but till date no prosecution witness has been examined. Whenever an FIR is lodged under the NDPS Act and thereafter the learned Court takes the cognizance of the same and charges are framed, then it is rather a duty of the prosecution witnesses to depose before the Court and many times the Court is constrained to compel the witnesses to depose before the Court. It is not understandable as to why the police officials, who have themselves set the criminal law into motion, have not cared to depose before the Court for about 20 times despite repeated summons sent to them. The delay has been caused at the hands of the prosecution and for no fault of the petitioner and he had to face long incarceration only because of the fault and conduct of the police officials, who are the prosecution witnesses. Therefore, this Court is left with no option but to draw an adverse inference at least for the purpose of considering the prayer of the petitioner for grant of regular bail. The facts and circumstances of the present case would lead this Court to have *prima facie* view that there are reasons to believe at least at this stage for the purpose of considering the grant of regular bail that the petitioner is not guilty of an offence.

So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, as per the learned counsel for the parties, the petitioner is not involved in any other case and is having clean antecedents and apart from the above, it is not the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on bail then he may repeat the offence or may abscond or flee from justice. Therefore, both the ingredients for making a departure from the bar contained Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances especially considering the fact that the prosecution witnesses have not deposed before the Court despite the fact that more than 20 times, they were summoned and also considering the long custody of the petitioner, which is 1 year and 11 months, this Court deems fit and proper to grant regular bail to the petitioner in the light of Article 21 of the Constitution of India.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the 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 only meant for the purpose of decision of present petition.

21.02.2023*Bhumika***(JASGURPREET SINGH PURI)****JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |