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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10633-2023 (O&M)

Date of Decision: 09.03.2023

Nikshya

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Kiran Bala, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

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. 84 dated 25.02.2020, under Sections 21-22 of NDPS Act, registered at Police Station Parao, District Ambala.

It has been submitted by the learned counsel for the petitioner that the present is a second bail petition filed by the petitioner and the earlier bail petition was dismissed on 27.07.2022. She has submitted that the petitioner is in custody from 25.02.2020 which is more than 3 years and charges in the present case were framed on 07.01.2021 which is more than 2 years and for the last more than 2 years, only one witness has been examined. She has submitted that it is a case where the petitioner is not involved in any other case and has got clean antecedents and the allegations against him were

pertaining to 400 injections of Buprenorphine containing 2 ml each which although falls in the category of commercial quantity under the NDPS Act but the fact that the petitioner is having clean antecedents and has been falsely implicated in the present case and that was the reason as to why the prosecution witnesses have not been examined despite the fact that more than 2 years have passed after the framing of the charges and consequence of the same was that the petitioner had to face incarceration for more than 3 years and the delay was not on the part of the petitioner but was on the part of the prosecution witnesses. She submitted that the criminal law was brought into motion by the police officials who allegedly apprehended the petitioner but there was no justification as to why they have withheld themselves from deposing before the Court for two long years after the framing of the charges which has prejudicially affected the rights of the petitioner. She 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.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that the petitioner is in custody from 25.02.2020 which is more than 3 years and for the last 2 years after the framing of the charges only one prosecution witness has been examined since the charges were framed on 07.01.2021. She further submitted that it is correct that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner is in custody from 25.02.2020 which is more than 3 years. The charges in the present case were framed on 07.01.2021 which is more than 2 years and as per the learned counsel for the parties, only one

witness has been examined. 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 are not deposing before the Court despite the fact that 2 years have elapsed after the framing of the charges, she could not offer any explanation. 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 present case, the total incarceration of the petitioner is more than 3 years. The charges in the present case were framed more than 2 years ago but only one witness has been examined. The petitioner is stated to be not involved in any other case and is having clean antecedents. The alleged recovery is only 400 injections of Buprenorphine which although falls in the commercial quantity but in view of the aforesaid facts and circumstances of the present case no justification has come forth from the State as to why the prosecution witnesses could not be examined for more than 2 years after the framing of the charges and therefore, this Court has no option but to draw an adverse inference against the prosecution for the purpose of considering the effect of Section 37 of the NDPS Act. Therefore, considering the facts and circumstances of the present case, this Court is of a *prima facie* view at this stage at least for the purpose of considering bail application that the petitioner is not guilty of 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 State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice especially in view of the fact that the petitioner is having clean antecedents and is not involved in any other case. 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 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.

09.03.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No