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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.14693 of 2023 (O&amp;M)

Date of Decision: 28.03.2023

Basant Singh

..... Petitioner

V/s.

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

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Present: Mr. Vipul Jindal, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab  
for the respondent.

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**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 FIR No.21 dated 12.12.2018, under Section 21, 25, 29 of the Narcotics Drug and Psychotropic Substances Act, Section 25 of Arms Act and Section 307 IPC, registered at Police Station SSOC, Amritsar.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 12.12.2018 which is almost 04 years and 03 months. He submitted that as per the allegations, the police had apprehended the petitioner and the co-accused who was driving the Motor Cycle and the petitioner was pillion rider and allegedly there has been recovery of 4 kgs 230 gms of Heroin from the back-pack of the petitioner. He submitted that in the present case, the petitioner has been falsely implicated due to personal enmity and the petitioner is not involved in any other case, except for one, under the Prisons Act while he was in custody in the present case and otherwise, he is having clean antecedents. He further submitted that the other co-accused namely Manjinder Singh who was riding the Motor Cycle has been extended the benefit of regular bail on 22.03.2022 (Annexure P-6) by the

Co-ordinate Bench of this

Court. He further submitted that in his earlier bail petition filed before this Court, vide order dated 31.10.2022 (Annexure P-5), the bail was not granted to the petitioner but considering his long custody, directions were issued to the trial Court to expedite the trial. He submitted that on the alternate prayer which was made by the learned counsel for the petitioner in the earlier bail petition considering the long custody, the trial Court was directed to expedite the trial. He submitted that thereafter not even a single witness has been examined by the trial Court and regarding which the zimni order(s) have been attached with present petition as Annexure P-11(Colly) which would show that after the passing of the aforesaid order by this Court, the prosecution witnesses were summoned but they did not appear and rather on 03.02.2023, the learned trial Court was constrained to issueailable warrants against the prosecution witnesses. Thereafter, two prosecution witnesses against whom theailable warrants were issued, appeared on the next date of hearing before the trial Court but they were not examined by the trial Court because of paucity of time andailable warrants were also issued against the remaining prosecution witnesses. He submitted that in this way, after the passing of the aforesaid order by this Court no further witness has been examined and the directions which were issued by this Court for expediting the trial was of no use. He submitted that consequence of the same is that the petitioner has faced incarceration for a period of 04 years and 03 months.

Learned counsel further submitted that even otherwise also, the petitioner deserves concession of regular bail on the ground that there were two accused in the present case, the petitioner and the co-accused-Manjinder Singh and while invoking Section 50 of the NDPS Act, whereby an offer was given and the said offer was joint offer for both the accused and in this regard, he referred to Annexure P-7 which was memo of consent. He also referred to a judgment

of Hon'ble Supreme Court in *State of Rajasthan Vs. Paramanand and Another* in (2014) 5 SCC 345 to contend that the joint offer of the right under Section 50 of the NDPS Act frustrates the very purpose of a Section 50 and has submitted that in this way even the offer which was given under Section 50 of the NDPS Act was defective offer which would vitiate the entire trial itself.

On the other hand, learned State counsel submitted that as per the orders attached by learned counsel for the petitioner alongwith the petition after the passing of the earlier order by this Court, bailable warrants were issued to the prosecution witnesses. She submitted that now 06 witnesses have been examined and there has been recovery of 4 kgs and 230 grams of *heroin* from the petitioner and also a 9 mm pistol from where he had fired gun shot at the time when he was apprehended and since the recovered quantity falls under the category of commercial quantity under the NDPS Act, the petitioner does not deserve the concession of regular bail unless he is able to make out any ground for making a departure from the same. She submitted that so far as the antecedents of the petitioner is concerned, he is not involved in any other case, except there is one case against the petitioner under the Prisons Act and it is also correct that the other co-accused, namely, Manjinder Singh who was the rider of the motor cycle has been granted bail on 22.03.2022 (Annexure P-6) by the Co-ordinate Bench of this Court.

At this stage, Mr. Jindal, appearing on behalf of the petitioner submitted that so far as the allegations pertaining to recovery of pistol from the petitioner is concerned, the same was also planted upon the petitioner especially in view of the fact that it is a case of no injury and allegations are that he had fired.

Further there is neither any evidence nor any injury to anybody, in this regard, and therefore, that cannot become a ground for denial of regular bail to the petitioner.

I have heard learned counsel for the parties.

The petitioner has faced incarceration for a period of 04 years and 03 months. The other co-accused, namely, Manjinder Singh has been granted bail on 22.03.2022 (Annexure P-6) by this Court. The petitioner is not involved in any other case except for one under Prisons Act. This Court in the earlier bail petition vide order dated 31.10.2022 (Annexure P-5), had directed the trial Court to expedite the trial but as per the zimni orders which are annexed alongwith the present petition, no further prosecution witness has been examined and rather on the other hand, bailable warrants were issued by the trial Court for securing the their presence and despite the same, they have not been examined till date. The alleged confiscation from the petitioner is 04 kgs and 230 grams of *heroin* which although falls in the category of commercial quantity but the prayer of the petitioner has to be considered in the light of the fact that as to whether any ground is made out at this stage for departure from the bar contained under Section 37 of the NDPS Act or not.

Considering the facts and circumstances of the present case and this Court rather on 31.10.2022 (Annexure P-5) directed the trial Court to expedite the trial and even thereafter, the trial Court was constrained to issue bailable warrants against the prosecution witnesses with a result that no prosecution witness has been examined and about 05 months have elapsed but no further witness has been examined.

On a query being raised to the learned State counsel as to why even after the passing of the orders by this Court to expedite the trial, even bailable warrants were required to be issued against the prosecution witnesses and what

are the reasons thereof, she was not able to justify the same.

The Hon'ble Supreme Court in ***“Satender Kumar Antil Vs. Central Bureau of Investigation”***, (2021) 10 SCC 773 had considered the issue with regard to repeated adjournments in the light 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”.*

Apart from the above, learned counsel for the petitioner also submitted that there is a direct violation of Section 50 of the NDPS Act while referring to Annexure P-7 wherein a joint offer was made which was contrary to the law laid by Hon'ble the Supreme Court in ***State of Rajasthan Vs. Paramanand***

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**and Another** (*supra*). In this regard, the arguments raised by learned counsel for the petitioner does carry weight.

Although this Court does not wish to make any observations on the merits of the present case, particularly, with regard to the fact of offer which was made to the petitioner and the other co-accused under Section 50 of the NDPS Act, but for the purpose of considering the prayer of the petitioner for grant of bail, the aforesaid factum would certainly carry weight. The petitioner is stated to be not involved in any other case. Now the custody of the petitioner is 04 years and 03 months.

Considering the aforesaid facts and circumstances, this Court is of the view that in the light of the joint offer made to the petitioner and the co-accused and unexplained reasons for adjourning the case after this Court had earlier passed an order by which the trial Court was constrained to issueailable warrants against the prosecution witnesses, this Court would have therefore *prima facie* reasons to believe atleast at this stage, only for the purpose of considering the grant of regular bail, the petitioner is not guilty of offence. Apart from the above, 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 be not involved in any other case under the NDPS Act, nor it is a case of learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act, remain satisfied. In addition to the above, the co-accused who was allegedly riding the motor cycle has also been enlarged on bail on 22.03.2022 (Annexure P-6) by the Co-ordinate Bench of this Court. Therefore, considering the totality of facts and circumstances and in the

light of Article 21 of the Constitution of India and also considering the total custody period of the petitioner which is 04 years and 03 months, this Court deems it fit and proper to grant 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.

**28<sup>th</sup> March, 2023**

Sonia Puri

**(JASGUPREET SINGH PURI)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No