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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M No.16381 of 2023 (O&M)****Date of Decision: 19.07.2023**

Rinku

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

1. The present is the second petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.214 dated 27.09.2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Samana, District Patiala.

2. Learned counsel for the petitioner submits that the petitioner is of age of 38 years and has been falsely implicated in the present case. He submitted that it is a case where earlier the petitioner was at his residence when the police party had come and asked from him with regard to as to whether he was carrying any intoxicant substance or not but nothing was found from him. Thereafter, as per the prosecution, after one and a half hour after his search an FIR was lodged on the ground that there were 1700 tablets of Tramadol Hydrochloride which were used tablets and 400 tablets of Alprazolam from the packet which he was carrying. He

further submitted that the entire story was concocted and false in order to falsely implicate the petitioner due to enmity in the vicinity.

3. He submitted that even otherwise also, the petitioner has no criminal background and is not involved in any other case. He submitted that the argument with regard to false implication of the petitioner can be made out from the fact that in the present case charges were framed by the trial Court on 21.03.2022 and thereafter the first IO i.e. PW1- Navdeep Singh, ASI was examined on 30.5.2022 and he was only partly chief examined. It is almost 01 year and 02 months which have elapsed thereafter that he did not even care to again come to the Court and depose for completing even the examination-in-chief. He submitted that thereafter for 17 times, the aforesaid Navdeep Singh, ASI did not appear despite the fact that bailable warrants were issued against him for a number of times. With regard to PW-2-Baljeet Singh, ASI who was the IO and was partly cross-examined on 23.12.2022 and after that for him also, a number of times bailable warrants were issued which were served to him but he did not care to appear before the Court for further cross-examination and now almost 08 months have elapsed after the Court where repeatedly he has been summoned with the bailable warrants but he is not appearing before the Court. He submitted that so far as the remaining two witnesses are concerned who have been examined are the formal witnesses. Learned counsel for the petitioner submitted that the conduct of the aforesaid Prosecution Witness who are the police Officers would lead to a reason that the petitioner has been falsely implicated and that is why they are not caring to appear before the Court and subject them to the cross-examination and there is no justification for evading the process of the Court. He submitted that the result of the same was that the petitioner had to face incarceration for 01 year and 10

months and the petitioner is having no criminal background. It is submitted that in view of the aforesaid peculiar facts and circumstances of the present case, the case of the petitioner may be considered for grant of regular bail.

4. On the other hand, learned State counsel has stated that it is correct that the petitioner is in custody for about 01 year and 10 months and 04 witnesses, as aforesaid, has been examined. So far as the part examination of the aforesaid two witnesses namely Navdeep Singh, ASI and Baljeet Singh, ASI is concerned, they have been repeatedly summoned through bailable warrants and have been only partly examined, the same is also correct on instructions from Som Nath-HC who is also present in Court. He has however opposed the grant of bail on the ground that the aforesaid quantity recovered from the petitioner falls in the category of commercial quantity and therefore, the prayer made in the petition is hit by the bar contained under Section 37 of the NDPS Act. On instructions, learned State counsel has also submitted that he is not involved in any other case.

5. I have heard learned counsel for the parties.

6. It is a case where the petitioner had faced incarceration for about 01 year and 10 months. The charges were framed way back on 21.03.2022 which is almost one and a half year. As per the learned counsel for the parties, the police Officers who are the prosecution witnesses and set the criminal law into motion initially deposed before the Court and they were partly examined but at the time for the purpose of subjecting them for cross-examination they delayed the process of Court despite the fact that thereafter a number of times, bailable warrants were issued against them and particularly one of the witness mainly PW1 namely Navdeep Singh, ASI who was only examined partly in chief on 30.5.2022 which is almost 01 year 02 months ago has not turned up even till date.

7. The Hon'ble Supreme Court in ***“Satender Kumar Antil Vs. Central Bureau of Investigation”***, (2021) 10 SCC 773 has 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”.

8. Recently also the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [2023 AIR (SC) 1648]** has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.19 and 20 are reproduced as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether,

resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

9. In view of the aforesaid totality of facts and circumstances, wherein trial has been delayed at the end of the prosecution witnesses and considering the background of the petitioner whereby he is not involved in any other case and considering the long custody of the petitioner, this Court deems it fit and proper to grant regular bail to the petitioner. In view of the aforesaid facts and circumstances of the case, the bar contained under Section 37 of the NDPS Act will not apply to the present petition and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to grant bail to the petitioner.

10. 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.

11. 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.

12. Since the main petition has been allowed, all the pending application(s) also stand(s) disposed of.

19th July, 2023

Sonia Puri

(JASGUPREET SINGH PURI)
JUDGE

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