

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

CRM-M-21359-2023 (O&M)

Date of Decision: 12.07.2023

Lakhvir Singh @ Bhagtu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Lakshay Bector, Advocate for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. 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. 41 dated 02.07.2021, under Sections 22 and 25 of NDPS Act, registered at Police Station City Raikot, District Ludhiana.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 1 year, 9 months and 23 days. He submitted that the charges in the present case have already been framed on 23.02.2022 and thereafter for a number of times the matter was adjourned by the learned trial Court and the learned trial Court was constrained to issue bailable warrants against the prosecution witnesses for a large number of time. He also referred to the various orders passed by the learned trial Court after the framing of the charges to contend that even repeated bailable

warrants were issued against ASI Balvir Singh and after repeated bailable warrants, he was thereafter examined and similarly, bailable warrants have been issued against the I.O of the case namely SI Jarnail Singh and who is also evading the process and did not deliberately appear before the learned trial Court. He submitted that it is almost 1 ½ years after the framing of the charges that even the prosecution witnesses are not appearing before the learned trial Court for deposition since the petitioner was falsely implicated in the present case. He submitted that the petitioner is not involved in any other case and has got clean antecedents and even as per the prosecution, the alleged recovery from the petitioner was 200 tablets make Roldal -100 SR and 40 tablets of Tramwel-SR 100 containing the salt of Chlorpheniramine Malete which does not fall within the ambit of NDPS Act. He further submitted that one of the other co-accused, namely, Angrej Singh @ Geji has been extended the benefit of regular bail by this Court vide Annexure P-3 on 14.11.2022 on the ground that the recovery of the tablets from him did not fall within the ambit of the NDPS Act since the salt contained in the tablets was Chlorpheniramine Malete. He submitted that so far as the present petitioner is concerned considering his long custody and the fact that the prosecution witnesses themselves are deliberately evading the process of the trial Court, he may be considered for the grant of regular bail. He also referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51] and also a latest judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648] and contended that when the trial of the case is delayed for no fault

of the accused person, then the Right to Life guaranteed under Article 21 of the Constitution of India gets affected.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and it is also correct that more than 1 ½ years have elapsed after the framing of the charges but only one witness has been examined and that too after repeated bailable warrants issued to the aforesaid witness, namely, ASI Balvir Chand. So far as the recovery from the present petitioner is concerned, he submitted on instructions that there was alleged recovery of 200 tablets make Roldal-100 SR and 40 tablets of Tramwel-SR 100 containing the salt of Chlorpheniramine Malete and the aforesaid 40 tablets do not fall within the ambit of NDPS Act.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner has faced incarceration for 1 year, 9 months and 23 days. The alleged recovery from the petitioner is stated to be 200 tablets make Roldal-100 SR and 40 tablets of Tramwel SR 100 containing the salt of Chlorpheniramine Malete. The salt of Chlorpheniramine Malete does not fall within the ambit of NDPS Act. One of the co-accused namely, Angrej Singh @ Geji has already been extended the benefit of regular bail by this Court vide Annexure P-3. The charges in the present case were framed about 1 ½ years ago but for a number of times the trial Court had to issue bailable warrants against the prosecution witnesses who are no other but those police officials who had set the criminal law into motion and no justification has come from the learned State counsel as to why they had evaded the process of law. One ASI Balvir Singh

was examined after repeated bailable warrants issued against him. I.O namely SI Jarnail Singh had also not deposed before the learned trial Court till date and for him also as per the learned counsel for the petitioner bailable warrants have been issued.

6. 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”.

7. Recently also the Hon'ble Supreme Court in ***Mohd. Muslim @***

Hussain (Supra) 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.

8. In the present case, the petitioner is stated to be not involved in any other case and as per the learned counsel for the parties, there was

recovery of 200 tablets of Tramadol which does not fall in the category of commercial quantity under the NDPS Act. The petitioner has faced incarceration for 1 year, 9 months and 23 days. Furthermore, it is not the case of the State that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

9. In view of the above, 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.

10. 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.

12.07.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No