

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

216

CRM-M-22251 of 2023

Date of Decision:31.07.2023

Prem Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J. K. Singla, Advocate,
for the petitioner.

Mr. J. S. Arora, 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.118 dated 10.08.2020, under Sections 22, 29 of the NDPS Act, registered at Police Station Joga, District Mansa.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody for two years and six months. He submitted that the charges in the present case were framed by the learned trial Court on 18.02.2021 which is almost 2½ years ago but till date only one prosecution witness has been examined completely and another prosecution witness has been examined in part. He submitted that it is a case where the petitioner has been falsely implicated in the present case and that was the reason as to why for a long time after the framing of the charges, prosecution witnesses did not turn up for deposition with the result

that the petitioner has to face incarceration for about two years and six months for no fault of his.

3. Learned counsel for the petitioner submitted that as per the allegations, the petitioner alongwith other co-accused, namely, Nirmal Singh @ Babbi were caught with 1950 tablets of Tramadol which although falls within the category of commercial quantity under the NDPS Act but it is a case where due to the facts and circumstances of the present case, the petitioner is entitled for the grant of regular bail and the prayer of the petitioner is not hit by the bar contained under Section 37 of the NDPS Act.

4. He submitted that the aforesaid co-accused, namely, Nirmal Singh @ Babbi has already been extended the benefit of regular bail by this Court vide CRM-M-3360 of 2023 on 18.04.2023 (Annexure P-2) and in which the entire details have been discussed pertaining to the zimni orders passed by the learned trial Court whereby about 23 times adjournments were granted and 4 times bailable warrants were issued against the prosecution witnesses and even for 2 times non-bailable warrants were issued against them but they did not care to depose before the learned trial Court and while considering the facts and circumstances and also the law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 (10) SCC 51 and **Mohd Muslim @ Hussain versus State (NCT of Delhi)** 2023 AIR (SCC) 1648, this Court granted bail to the aforesaid co-accused, namely, Nirmal Singh @ Babbi by passing a detailed order on merits and in the light of Article 21 of the Constitution of India. He submitted that although the petitioner was earlier involved in one more case under the NDPS Act in which he was convicted for one year but he has

already undergone the aforesaid period and has submitted that only because of that reason that the petitioner has been falsely implicated in the present case. He submitted that the present petitioner is exactly at parity with the aforesaid co-accused, namely, Nirmal Singh @ Babbi who has already been granted regular bail by this Court vide Annexure P-2 by passing a detailed order and by referring to the bar contained under Section 37 of the NDPS Act and in the light of Article 21 of the Constitution of India. He submitted that in view of the facts and circumstances as enumerated above, the petitioner may be considered for the grant of regular bail.

5. On the other hand, Mr. J. S. Arora, learned DAG, Punjab has stated that so far as the custody period of the petitioner is concerned, the same is correct and it is also correct that one prosecution witness has been examined completely and another prosecution witness has been examined in part. He however submitted that the status of the trial is the same which was there at the time when the co-accused, namely, Nirmal Singh @ Babbi was granted bail and there is no progress in the trial. So far as the parity of the petitioner with the other co-accused, namely, Nirmal Singh @ Babbi is concerned, he has not disputed the same.

6. I have heard learned counsel for the parties.

7. It is a case where the petitioner has already faced incarceration for about two years and six months and only one prosecution witness has been examined completely and another witness has been examined in part. In the month of April 2023 this Court had granted bail to the other co-accused and now after about three months as per learned counsel for the parties, there is no progress in the trial. The State has not disputed the issue with regard to the parity of the

petitioner with the other co-accused, namely, Nirmal Singh @ Babbi who has already been granted bail by this Court by passing a detailed order. Therefore, this Court is of the view that the petitioner deserves the concession of regular bail. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

8. 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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

July 31, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No