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

**CRM-M-30424-2022 (O&M)
Date of Decision: 14.02.2023**

Nachhatar Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Saurav Bhatia, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

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 case bearing FIR No.20 dated 26.03.2021, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Aur, District Shaheed Bhagat Singh Nagar.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 27.03.2021, which is more than 1 year and 10 months. He further submitted that after completion of the investigation, the challan has been presented before the competent Court and thereafter, charges have also been framed on 26.04.2022. He further submitted that although the charges have been framed about 10 months ago but till date no material witness has been examined. He also submitted that the petitioner was implicated in the present case at the behest of the police officials

themselves and allegedly there was a recovery of 50 injections of *Buprenorphine* containing 2 ml. each and 50 vials of Avil containing 10 ml. each. He submitted that so far as the injections of Avil are concerned, the same do not fall within the purview of NDPS Act and so far as the 50 injections of *Buprenorphine* are concerned, they fall within the purview of NDPS Act and they are in the category of commercial quantity, but in the present case the petitioner has been falsely implicated.

To substantiate his argument, he submitted that after the framing of the charges on 26.04.2022, none of the witnesses, who were allegedly part of the police party or at whose instance the present FIR was lodged, stepped into the witness box and just as an eye-wash, only three witness have been examined, who were the formal witnesses and the description of them were that PW-1 was Gurbir Singh, who was only a Munshi in the police station, PW-2 was Amandeep Singh, who is the person who had carried the sample and deposited in the FSL and PW-3 was Regan Gupta, who is a Clerk and had got nothing to do with the recovery process if at all. He further submitted that the police party, who had set the criminal law into motion did not choose to depose before the Court for long 10 months and regarding which he has also referred to the interlocutory orders which have been passed by the trial Court in this regard that for a number of times, they were summoned but they were not appeared. While referring to Annexure P-4, he submitted that the Inspector Malkiat Singh along with ASI Kuldeep Singh, ASI Balihar Singh, Constable Harpreet Singh and Constable Sandeep Kumar were on the vehicle driven by S/Constable Rajesh Kumar Bains and according to the police, they had apprehended the petitioner which was in fact a false implication and none of the aforesaid

persons have stepped into the witness box and consequently, the petitioner had to face incarceration for 1 year and 10 months. Learned counsel for the petitioner has relied upon the latest judgment of the Hon'ble Supreme Court passed in “**Satender Kumar Antil Vs. Central Bureau of Investigation and another**”, **2022(10) SCC 51**, to contend that repeated adjournments for the purpose of summoning of the witnesses, who are the material witnesses which leads to long incarceration of an accused person is violative of Article 21 of the Constitution of India. He further submitted that there is no justification with the police as to why those material witnesses who were part of the police party or recovery witnesses as per the prosecution did not care to depose before the Court for long period of time, and therefore, he may be considered for the grant of regular bail. He also submitted that although the petitioner is involved some more cases but in most of the cases the petitioner has been acquitted since in all the cases the petitioner was falsely implicated and all the FIRs pertained to only two Police Stations i.e. Aur and Rahon. He submitted that in view of the aforesaid position, the rigors of Section 37 of the NDPS Act will not apply to the present petitioner.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for a period of 1 year and 10 months and the charges in the present case were framed on 26.04.2022 but none of the material witnesses have been examined. She further submitted that it is also correct that the aforesaid three witnesses as stated by the learned counsel for the petitioner, were either the person who had carried the sample or was working as Clerk in the Police Station. She after seeking instructions from ASI Narinder Kumar, who is present in

Court today, has submitted that none of the police officials, who were stated to be a part of the police party or recovery witnesses have been examined till date. She has however opposed the grant of regular bail to the petitioner on the ground that the bail petition of the petitioner is hit by the bar contained under Section 37 of the NDPS Act and also the petitioner is involved in some other cases as well.

I have heard the learned counsel for the parties.

It is a case where the petitioner has faced incarceration for 1 year and 10 months. The charges in the present case were framed on 26.04.2022 but till date none of the material witness has been examined. The three witnesses which are stated to be examined were only those persons, who had carried the sample to the FSL or they were posted as Clerk in the police station. A perusal of Annexure P-4 would show that as per the Police, there was a complete police party which consisted of six persons headed by one Inspector Malkiat Singh, but despite being summoned for number of times by the trial Court, they did not care to depose before the trial Court and only those witnesses have been examined who were not a part of the police party. The criminal law was set into the motion by the persons, who had allegedly apprehended the petitioner and during the course of arguments, this Court had put a specific query to the learned State counsel as to what is the justification as to why they did not care to depose before the Court for long 10 months, she was not able to justify the same.

The law with regard to repeated adjournments and effect of Article 21 of the Constitution of India have been discussed in detail by the Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)*. Para

No.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, apparently the persons, who were part of the police party or the recovery witnesses as per the prosecution story did not care to depose before the Court but only three other witnesses have been examined who appear to be non-material witnesses. No justification has

come forth from the State Counsel as to why they did not care to depose before the Court. The net result of the same was that the petitioner had to face incarceration for 1 year and 10 months.

In view of the aforesaid facts and circumstances, this Court is of the view that on the basis of the conduct of the police officials, who did not care to depose before the Court for long 10 months, an adverse inference has to be drawn against them at least for the purpose of considering the bail petition of the petitioner. This would also lead this Court to have reasons to believe that at least at this stage, 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 has not been argued by the learned State counsel that in case the petitioner is released on bail then he may repeat the offence or may abscond or flee from justice or may influence the witness or may tamper with the evidence.

Therefore, both the ingredients for making a departure from the bar contained Section 37 of the NDPS Act remain satisfied. The mere pendency of other cases against the petitioner, which according to the learned counsel for the petitioner, he has already been acquitted in most of cases, would not become a bar for grant of regular bail to the petitioner in the peculiar facts and circumstances of the present case.

In view of the above, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the 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 only meant for the purpose of decision of present petition.

14.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |