

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

CRM-M-37043-2022 (O&M)

Reserved on : April 27, 2023

Date of Decision : May 08, 2023

Opinder Singh @ Neetu

.....Petitioner

Vs.

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: None for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

On 2.9. 2022, the following order was passed :-

“On the last date of hearing, following order was passed: -

“This is the second petition that has been filed for grant of regular bail to the petitioner in case FIR No. 74 dated 08.06.2021, registered under Section 21(b) of the NDPS Act, 1985 at Police Station Maqsudan, District Jalandhar (Rural). The earlier petition, bearing CRM-M-1144-2022, was dismissed as withdrawn on 28.04.2022.

The new grounds for filing the present petition are that the petitioner is in judicial custody

for the last 01 year, 02 months and 16 days and the trial is not proceeding.

Learned counsel for the petitioner has placed on record some zimini orders to submit that despite the fact that the petitioner is in judicial custody since 10.06.2021, the Judge, Special Court-IX, Jalandhar is repeatedly issuing non-bailable warrants against the petitioner.

This requires an explanation from the Judge, Special Court IX, Jalandhar as well as Superintendent, Central Jail, Kapurthala.

List again on 02.09.2022.

In the meantime, the Registry is directed to seek an explanation from the Judge, Special Court-IX, Jalandhar as to why repeated non-bailable warrants are being issued against the petitioner, though he is already in judicial custody.

The Superintendent, Central Jail, Kapurthala is also directed to depute a senior officer to explain before this Court as to why the petitioner is not being produced before the said Court as and when the dates are fixed in the case."

Report from the Judge, Special Court, Jalandhar-IX is received.

An explanation given by the Superintendent, Central Jail, Kapurthala, filed in the Court today, is taken on record.

Mr. Hemant Sharma, Additional Superintendent, Central Jail, Kapurthala is present in the Court.

In the report submitted by the Judge, Special Court, Jalandhar-IX, it is stated that for the first time, his predecessor issued production warrants on 09.09.2021, but the accused was not produced by the jail authorities. On 19.10.2021, Additional Public Prosecutor stated before the Court that the accused has been released on bail, therefore, notice was issued to the accused and the surety for 07.01.2022 (though this fact, as noticed in the order, is factually incorrect). Thereafter, the case was transferred to the present Presiding Officer and was adjourned for 10.02.2022 for awaiting appearance of the accused and for arguments on charge. Again, same order was passed, while adjourning the case for 04.03.2022. Copies of the zimni orders are attached with the report. On 04.03.2022, none appeared on behalf of the accused and again notice was issued on 24.03.2022. On 24.03.2022, no one appeared on behalf of the accused and notice was issued for 30.04.2022. It is further stated in this report that the Duty Judge, on 04.06.2022, passed an order for summoning the accused through non-bailable warrants for 18.08.2022, which was received back unexecuted with the report that 'house lying locked'. Again on 18.08.2022, fresh non-bailable warrants for arrest of the accused have been issued for 17.09.2022. It is also stated that on 31.08.2022, Judge, Special Court received a communication through email from the Superintendent, Central Jail,

Kapurthala intimating that in the present case, this Court sought explanation and the file was taken up and it was found that the accused is still in custody in Central Jail, Kapurthala.

The explanation given by the Superintendent, Central Jail, Kapurthala is also to the extent that accused/under-trial Opinder Singh @ Neetu was transferred from Central Jail, Amritsar to Central Jail, Kapurthala on 22.05.2022 and thereafter, the Superintendent, Central Jail, Kapurthala sent a communication to the Judge, Special Court, Jalandhar on 28.06.2022 and on 30.08.2022, sent another communication to the said Court.

From perusal of the report submitted by the Judge, Special Court, Jalandhar-IX as well as explanation given by the Superintendent, Central Jail, Kapurthala, it is apparent that under-trial Opinder Singh @ Neetu was never produced before the Court for a considerable period of more than 01 year either on account of fault of the Court or the Investigating Officer or the Superintendent, Central Jail, Amritsar or by the Additional Public Prosecutor, who made false statement that the accused is released on bail, resulting into issuance of non-bailable warrants by the Court, without verifying this fact from the Court file itself, as after the under-trial/petitioner was transferred to Central Jail, Kapurthala, necessary communication was sent to the Court in this regard.

As per the custody certificate filed in the Court today, the petitioner stands convicted in five cases

under NDPS Act and his sentence is 05 days in FIR No.181 dated 09.11.2018, 10 days in FIR No.17 dated 15.02.2011 and 02 months in two cases, which suggests that he was sentenced for carrying small quantity of the narcotics. Even in the present FIR, recovery is of 10 grams of heroin and it appears that the petitioner is a drug addict and not a drug paddler.

List again on 30.09.2022.

It is well settled proposition of law as held by the Hon'ble Supreme Court that grant of bail to an accused is directly related to his right of life and liberty. In the instant case, surprisingly, a very casual approach is adopted by the trial Court, as till date, despite long custody of the petitioner, charge has not been framed, therefore, the trial is yet to commence. For a considerable period of one year, the case is being adjourned or non-bailable warrants are issued against the petitioner, though he is in judicial custody and it appears that without looking into the case file that the petitioner was never granted bail, the trial Court has believed the false statement of the Additional Public Prosecutor that the petitioner has been released on bail and thereafter, on every date, non-bailable warrants were issued.

Even more surprising and shocking is report of the Process Server, from which, it appears that he prepared the report, while sitting in the office that house of the petitioner is lying locked. Had the Process Server visited house of the petitioner, it would

brought to notice of the Court that in fact, he is in judicial custody and was never granted bail.

Be whatsoever, considering the fact that the petitioner, who is required to be produced before the trial Court on production warrants under Section 267 Cr.P.C. either in person or through video conferencing, was never produced before the trial Court over a period of one year, due to which even the charge has not been framed, therefore, Registrar (Vigilance)/Registrar (Building) of this Court is directed to hold an inquiry and fix the responsibility of the person, on whose casual and irresponsible approach, the petitioner is made to suffer.

Needful be done within a period of 30 days from today.

Till the time, report of the Registrar (Vigilance)/Registrar (Building) is received and also considering the fact that life and liberty of the petitioner is at stake, which is taken in a very casual manner, as noticed above, the petitioner is directed to be released on interim bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned."

Thereafter, enquiry report from the Registrar Vigilance was received and in the meantime, the counsel for the petitioner submits that the petitioner has already been released as he has undergone the sentence vide order dated 26.9.2022 passed by the Special Judge, therefore, the main petition be rendered infructuous.

Accordingly, the prayer with regard to the regular bail was rendered infructuous. However, this Court is to pass appropriate orders on the enquiry report submitted by the Registrar Vigilance.

A perusal of the report reveals that on 19.10.2021, Additional Public Prosecutor stated before the Special Judge that the petitioner/accused has been released on bail and the then Presiding Officer issued notice to the accused, sureties and his identifier for 7.1.2022.

Thereafter, the case was transferred to another Additional Sessions Judge, Jalandhar and due to COVID-19 situation, the case was adjourned. However, no efforts were made to find out whether the petitioner is in custody or not, as per the various *zimni* orders passed by the trial Court.

It is stated in report that the present Special Judge has taken charge on 12.7.2022 and when the non-bailable warrants were issued against the petitioner/accused by the Duty Magistrate during summer vacations, the Bailiff submitted a report that the house is lying locked and again non-bailable warrants were issued. It is stated that only on 31.8.2022 when Superintendent, Central Jail, Kapurthala highlighted that no production warrants of Opinder Singh @ Neetu were issued by the Court and, thereafter, this Court has initiated the action as noticed above, as it came to the notice of this Court that the accused is still in custody.

In nutshell, in the report, the Sessions Judge has submitted :-

- (i) The Judicial Officer/Presiding Officers were transferred from time to time and under a *bona fide* impression carried forward the subsequent order on the basis of the previous orders;

- (ii) The APP, who had made incorrect statement on 19.10.2021 that the accused has been released on bail has though denied making such statement, however, he did not act with due diligence, by not bringing it to the notice of the Presiding Officer even on subsequent date after making an incorrect statement and it is held that it is the APP, who made a wrong statement, which led to the entire controversy.
- (iii) So far as the role of the Superintendent, Central Jail, Kapurthala and other officials is concerned, it is concluded that the only fault was that it was not informed to the Court in time, regarding detention of the accused for a period of 3 months. However, it has come on record that it is only when the Superintendent, Central Jail, Kapurthala brought it to the notice of the trial Court that production warrants were not sent, further action was taken;
- (iv) Regarding the role of subordinate staff, i.e. Ahlmad and Naib Court etc., it is stated that the concerned Ahlmad, did not check the custody warrants and did not send the production warrants to the Superintendent, Central Jail, Gurdaspur in time and he was at fault;
- (v) It was concluded that Superintendent, Central Jail, Amritsar did not submit intimation for production warrants to the Court;
- (vi) The Process Server is also held guilty for not making sincere efforts for getting the service effected of the warrants against the accused.

It is again relevant to mention that petitioner Opinder Singh @ Neetu was arrested on 8.6.2021 for carrying small quantity of narcotic substance and vide order dated 25.9.2022, he has undergone the sentence and by paying a fine of Rs.1,000/-. Thus, he remained in custody for about 01 year, 03 months and 16 days.

In view of the same, this Court deem it appropriate to drop the proceedings by directing the Sessions Judge, Jalandhar to issue warning to the subordinate staff, i.e. Naib Court, Ahlmad and Process Server and the APP concerned to be careful in future and costs of Rs.25,000/- to be paid to the petitioner by the District Legal Service Authority within a period of two months from today and compliance report be sent to this Court.

(ARVIND SINGH SANGWAN)
JUDGE

May 08, 2023
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO