

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-36762-2022 (O&M)

Date of Decision: 15.02.2023

**Gurpreet Singh @ Guri**

....Petitioner(s)

Versus

**State of Punjab**

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. S.S. Gill, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

\*\*\*\*

**JASGURPREET SINGH PURI, J. (Oral)**

**CRM-171-2023**

The present application has been filed for placing on Annexure P-4.

For the reasons recorded in the application, the same is allowed. Annexure P-4 is taken on record subject to all just exceptions.

**Main case**

The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 92 dated 18.10.2020, under Sections 22/25 of NDPS Act, registered at Police Station Sadar Raikot, District Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 18.10.2020 which is about 2 years and 4 months. He

submitted that it is a case where as per the prosecution story the police party

had got information and the petitioner was caught alongwith 1400 tablets of Tramadol. He submitted that the present is a case where due to enmity in the village the present case was planted upon the petitioner and the petitioner is not involved in any other case and has got clean antecedents. He submitted that in the present case although the quantity of 1400 tablets of Tramadol falls in the category of commercial quantity but the rigor of Section 37 of the NDPS Act will not apply in the present case. To substantiate his arguments, he submitted that after the presentation of challan, charges were framed by the learned Special Judge on 09.08.2021 which is almost 1½ years but till date no prosecution witness has been examined. He referred to the zimni orders which he has placed on record vide Annexure P-4 to contend that a perusal of the zimni orders would show that after the framing of the charges, the trial Court/Special Court adjourned the case for more 12 times and for about 9 times the orders were passed for the purpose of summoning of the prosecution witnesses but for the reasons best known to the police officials they did not choose to step into the witness box and did not depose. He submitted that since it is a case of a false implication and the criminal law was brought into motion by the police officials who had planted the case upon the petitioner and were part of the police party as per the prosecution and there is no justification as to why they have kept away from the trial Court and did not depose despite the fact that for 9 times summons were issued to them. He further submitted that it is not that unless they are served that they should come to the Court for deposition but it is rather the duty of the prosecution witnesses who are those police officials who have set the criminal law into motion to step into the witness box but they failed to do so with the result that the petitioner had to face incarceration for about 2 years and 4 months for no

fault of the petitioner and especially when the petitioner is having clean antecedents and is not involved in any other case. He has relied upon a judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [ 2022 (10) SCC 51]*** in this regard.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 18.10.2020 which is about 2 years and 4 months and it is also correct that the petitioner is having clean antecedents and is not involved in any other case and till date no prosecution witness has been examined despite the fact that charges were framed on 09.08.2021. She has opposed the grant of regular bail to the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner is in custody from 18.10.2020 which is about 2 years and 4 months. The petitioner is stated to be not involved in any other case and is having clean antecedents. The alleged recovery from the petitioner is 1400 tablets of Tramadol which does fall in the category of commercial quantity. The charges were framed on 09.08.2021 and as per the learned counsel for the parties, not even a single prosecution witness has been examined despite the fact that for 9 times the prosecution witnesses were summoned. The 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”.*

In the facts and circumstances of the present case, the charges were framed about 1 ½ years ago and repeated adjournments were granted and the prosecution witnesses were summoned. The criminal law was set into motion by the police officials especially the present case being under the NDPS Act and those police officials are the material witnesses and during the course of arguments, a query was raised to the learned State counsel as to what was the justification for not depositing before the Court despite adjournments and as to whether it was not the duty of the police officials to have themselves deposed before the Court, she was not able to justify the same. Therefore, in view of the aforesaid facts and circumstances especially by considering the long custody of the petitioner and the fact that for the last 1½ years charges

have been framed but no prosecution witness has been examined, this Court has no option but to draw an adverse inference against the prosecution for the purpose of considering the effect of Section 37 of the NDPS Act. Therefore, the facts and circumstances of the present case would lead this Court to come to a *prima facie* view at this stage at least that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained Section 37 of the NDPS Act is concerned, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or abscond from justice especially in view of the fact that the petitioner is having clean antecedents and is not involved in any other case. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act stand satisfied.

In view of the aforesaid totality of facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

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.

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.

15.02.2023

rakesh

(JASGURPREET SINGH PURI)  
JUDGE

|                    |   |        |
|--------------------|---|--------|
| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |