

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

209

CRM-M-38113 of 2022

Date of Decision:05.01.2023

Suresh Narang

....Petitioner

Versus

State of Haryana

.....Respondent

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

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Present: Mr. N.C. Kinra, Advocate,  
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

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

The present second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.197 dated 04.06.2021, under Section 17 of the NDPS Act, registered at Police Station Asauda, Tehsil Bahadurgarh, District Jhajjar.

It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 04.06.2021, which is more than 1½ years and the petitioner has clean antecedents and is not involved in any other case. He submitted that it is a case where the petitioner has been falsely implicated by the police by planting a case upon the petitioner. While referring to the allegations against the petitioner, he submitted that it was alleged that the petitioner alongwith the other co-accused namely Vijay Kapoor were apprehended while they were in a car which was being driven by the aforesaid co-accused and the petitioner was

sitting on the seat which was next to the driver seat. The petitioner is neither the owner of the car nor has any other relationship or connection with the driver of the car but he was only a passerby who had taken a lift in the car. He submitted that thereafter allegedly the police apprehended the car from which there was a recovery of 4.490 kgs. of Opium which was found in a packet behind the front seat. Although as per the FIR, the necessary compliance under Sections 42 and 50 of the NDPS Act were complied with but it is a case where the present case has been planted upon the petitioner as in fact no such incident had taken place. He submitted that the charges in the present case were framed on 22.11.2021 and thereafter repeated adjournments were granted by the learned trial Court and the prosecution witnesses especially the complainant PW1 was summoned on the next date fixed. On 05.04.2022 since the prosecution witnesses were not deposing before the Court despite being served, the trial Court issued bailable warrants against the prosecution witness ASI Ashwani Kumar who is the investigating officer of the present case for 04.07.2022 through the Superintendent of Police concerned. When the matter came up for hearing before the trial Court on 04.07.2022, the aforesaid investigating officer Ashwani Kumar again did not present himself before the Court despite being served again by way of bailable warrants. In the meantime, the petitioner had made an application before the learned trial Court for supplying of copy of CDR, location details and mobile phone details of the petitioner and the investigating officer so as to show that at the time of alleged incident as stated by the police the location was totally different and it was a case of false implication by planting a case upon the petitioner who is otherwise having clean antecedents. On the aforesaid application, the CDR of

mobile numbers were submitted by one Shri Narender Singh, JTO, BSNL, Jhajjar but the aforesaid investigating officer was still not present and thereafter on the next date of hearing again the investigating officer was not present and therefore warrants of arrest were issued against the aforesaid investigating officer to appear on the next date of hearing and rather it was directed that the investigating officer to appear on each and every date of hearing. In this way, after the framing of the charges on 22.11.2021 which is more than one year and one month not even a single prosecution witness has been examined despiteailable warrants and warrants of arrest being issued against the investigating officer.

Learned counsel for the petitioner submitted that the stand taken by the petitioner that the case was falsely planted upon the petitioner gets substantiated from the aforesaid facts due to the conduct of the police officials. He also referred to a latest judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 (10) SCC 51 to contend that repeated adjournments of such kind wherein evenailable warrants and repeated warrants of arrest are issued against the investigating officer prejudices the rights of the accused and in the present case the petitioner had been forced to face incarceration for more than 1½ years due to no fault of the petitioner and only because of the fault of the police officials who have set the criminal law into motion themselves and there was no justification for the police officials especially the investigating officer who had not deposed before the trial Court despite repeated summons,ailable warrants and warrants of arrest being issued to him.

Learned counsel for the petitioner has also submitted that the

petitioner is undergoing extreme hardship with his family and in fact the lives of 8 persons of his family have been seriously jeopardized because of the incarceration of the petitioner. He submitted that the father of the petitioner is 71 years of age and 100% visually disabled, sister is a divorcee and is handicapped and suffering from 75% permanent mental disability, son of the aforesaid sister is suffering from mental retardation which is to the extent of 75% as per PGI Rohtak, mother of the petitioner is again 71 years of age and is totally bed ridden due to hip joint fracture, son of the petitioner met with an accident and had broken both the legs and another son of the petitioner is 18 years of age and has now been admitted in a higher institute after completion of 10+2 and another son who is in 9<sup>th</sup> standard, is yet to be admitted in a higher institute. He submitted that in view of the aforesaid extreme adverse family circumstances of the petitioner, he was admitted to interim bail by this Court on 31.08.2022 for a period of three months. He submitted that after the expiry of three months of interim bail, he has now surrendered before the jail authorities and he is in custody. He has therefore prayed that the petitioner may be considered for the grant of regular bail.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has stated that it is correct that the petitioner is in custody from 04.06.2021, which is more than 1½ years and the charges in the present case were framed on 22.11.2021 and it is also correct that the petitioner has clean antecedents and is not involved in any other case. He has however submitted that since the quantity recovered in the present case was a commercial quantity under the NDPS Act, the prayer of the petitioner would be hit by the bar contained under Section 37 of the NDPS Act. She also submitted, on instructions from SI Mukesh Kumar, that after the expiry of

interim bail granted to the petitioner, he has surrendered before the jail authorities.

I have heard learned counsel for the parties.

Learned counsel for the petitioner has raised three submissions for being considered for grant of regular bail.

- 1) The conduct of the police officials who themselves set the criminal law into motion by registering a false FIR failed to depose before the learned trial Court despite being served and repeated bailable warrants and warrants of arrest being issued against them especially the investigating officer.
- 2) The acute adverse circumstances of the family of the petitioner by which the lives of 8 family members of the petitioner is being severely jeopardized by the incarceration of the petitioner.
- 3) The petitioner has clean antecedents and is not involved in any other case.

So far as the first argument raised by learned counsel for the petitioner is concerned, a perusal of the zimni orders as supplied by the learned counsel for the petitioner would show that the petitioner who has already faced incarceration for more than 1½ years, is facing trial after the framing of the charges against him on 22.11.2021 which is more than one year and one month. The learned trial Court issued summons to the prosecution witness who is the complainant and the investigating officer namely Ashwani and was served but he did not appear. On 05.04.2022 the learned trial Court was therefore constrained to issue bailable warrants against him in the sum of Rs.10,000/- with one surety in the like amount and also directed that the bailable warrants be served through the Superintendent of Police concerned. When the matter came up for hearing before the trial Court

on 04.07.2022, it was recorded by the learned trial Court that the bailable warrants have been served but the aforesaid ASI Ashwani who is the investigating officer did not come present and requested for the adjournment.

A separate application had been filed by the petitioner for supply of CDR, mobile and tower locations and the trial Court directed that the witnesses of the prosecution will be summoned after the decision of the application. A perusal of the order dated 26.10.2022 would show that the CDR of the mobile numbers mentioned in the order were submitted by one Shri Narender Singh, JTO, BSNL, Jhajjar. The investigating officer was directed to comply with the earlier order dated 02.05.2022. Thereafter, on 14.12.2022 warrants of arrest were issued against the investigating officer of the present case to appear on the next date of hearing and it was rather directed that the investigating officer will appear on each and every date of hearing.

The criminal law was set into motion by the police authorities especially the complainant who is the investigating but there is no justification coming forth as to why despite repeated summons, bailable warrants and warrants of arrest being issued to him, he did not appear and depose before the learned trial Court.

The Hon'ble Supreme Court in *Satender Kumar Antil's* case (supra) had discussed various effects of repeated adjournments in the light of Article 21 of the Constitution of India. The relevant portion of 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". "

From the above, it is clear that the investigating officer has not appeared before the learned trial Court despite summons,ailable warrants and warrants of arrest being issued to him and he was served at the initial stages. Therefore, the consequence of the same was that the petitioner has to face incarceration for more than 1½ years because of the aforesaid conduct of the police officials and there is no justification coming forthwith from the learned State counsel as to what prevented the investigating officer and as to whether it was beyond his control to appear or not.

Therefore, this Court would draw an adverse inference against the State and for the purpose of considering the effect of Section 37 of the NDPS Act, this Court *prima facie* has reasons to believe at least at this stage that the petitioner

is not guilty of the offence especially when he has clean antecedents and when the CDR reports have been submitted in the trial Court, the investigating officer is evading to depose before the learned trial Court despite warrants of arrest being issued against him.

So far as the second argument raised by the learned counsel for the petitioner with regard to the acute adverse family circumstances, the same also carries weight. This Court while granting interim bail to the petitioner on 31.08.2022 had passed a detailed order with regard to the same and the same is reproduced as under:-

“Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case since as per the allegations the petitioner alongwith other co-accused were found in the car when a naka was laid down on the basis of secret information and there was a recovery of 4.490 Kgs. of Opium from the car. He further submitted that the petitioner has got clean antecedents and he is not involved in any other case and he had got no knowledge with regard to the packet which was allegedly found in the car since he was neither the owner of the car nor he was driver of the car and he was only a passenger. He further submitted that be that as it may, his case may be considered at this stage for the grant of interim bail in view of the reasons which have been stated in para No.3 (vii). He further submitted that the family situation of the petitioner is such that the lives of all his family members is severely jeopardized because of the imprisonment of the petitioner in the present case. He submitted that the father of the petitioner is 71 years of age and is 100% visually disabled, sister is a divorcee and is handicapped and is suffering from 75% permanent mental disability, son of the aforesaid sister is suffering from mental retardation which is to the extent of 75% as per PGI, Rohtak, mother of the petitioner is 71 years of age and is bed

ridden due to hip joint fracture, son of the petitioner met with an accident and had broken both legs, another son of the petitioner is 18 years of age and is yet to be admitted in a higher institute after 10+2, another son of the petitioner is in 9th standard and is yet to be admitted in an institute for higher studies and brother of the petitioner met with an accident on 23.07.2022 and he died.

The aforesaid para is reproduced as under:-

3 (vii) The insight of the family circumstances are such as deserve symphonically consideration. These are enumerated as below:-

(a) The name of the father of the accused-petitioner is Sh. Prem Chand. He is 71 years old. He has 100% visual disability which hampers with his daily routine work. He is having this disability since long. He has already a certificate in this regard from the competent authority. It is dated 2.9.2021. It was issued by the Board of doctors. Now fresh certificate dated 16.8.2022 (Annexure P-5) has also been issued by the competent authority.

(b) Geeta sister of the accused-petitioner who is a divorcee and living with the accused- petitioner is a handicap. She has been suffering with permanent 75% mental disability since 27.1.2010. A true copy of the certificate dated 3.2.2010 issued by the Board of Doctors is appended as Annexure P-6 while the order dated 19.12.2019 passed by the Hon'ble Court on the basis of settlement is appended as Annexure P-7.

(c) Happy is the name of the son of Smt. Geeta- the real sister of the accused-petitioner. He is suffering from mental retardation. He has 75% of intellectual impairment to the extent of 75%. The certificate dated 14.3.2019 issued by PGI, Rohtak is appended as Annexure P-8. He has been deserted by his father who is living separate from the sister of the accused-petitioner since 19.12.2019 after long drawn litigation as stated

above. The matter ended in settlement in the Hon'ble Court at Rohtak as stated above.

(d) The name of the mother of the accused-petitioner is Smt. Shahni Devi. She is 71 years old. She is on the bed on account of the fracture of hip joint. She also remained as in-door patient for 26 days in the PGI Rohtak with Central No.84962. She also suffered a heart attack. The operation has not been advised on account of old age, heart and BP problem. She even cannot move upto to the Wash Room. A persons is needed to help her for her personal needs.

(e) Himanshu son of the accused-petitioner is aged 20 years. He met with an accident in April, 2020 with a car. His both legs were fractured. He remained admitted in Navjiwan Hospital Rohtak where he was operated upon by Dr. Parveen Garg, Orthopedician. He was again operated upon in Jan. 2022. He again met with an accident on 19.7.2022 and remained admitted with PGI, Rohtak with Admission No.13900 dated 20.7.2022. He is to be operated upon. He is confined to bed. There is no attendant. He is at the mercy of the relations and friend circle.

(f) Gautam Narang is the other son of the accused-petitioner. He is 18 years. He has passed out 10 plus 2. He is yet to be admitted in an institute for his higher studies or in vocational course.

(g) Sujal son of the accused-petitioner is aged 15 years. He has passed out his 9th standard class from St. Mary School, Rohtak. He is yet to be admitted in an Institute for his higher studies.

(h) Charanjit Lal the brother of the petitioner met with an accident and as a result, he died on 23.7.2022. he was cremated on 24.7.2022 and receipt issued by the incharge Shamshaan Bhumi dated 24.7.2022 (Annexure P-9) is attached.

The aforesaid events are some of the hard-pressed and mitigating grounds for the prayer for regular as well as interim

bail. He has to make arrangements for his sons. He has also to see his old, ailing, infirm, bed-ridden parents. He has also to make arrangement for an attendant to look after and attend on them. Charanjit Lal the real brother of the petitioner met with an accident and expired on 23.7.2022. The petitioner has also to make arrangement for the family of the deceased brother. He has also to arrange funds required for the hapless and helpless members of his family and parents.

Learned counsel for the petitioner has submitted that the petitioner would therefore pray for an interim bail in view of the aforesaid peculiar and extra ordinary circumstances whereby the entire family of the petitioner is suffering because of the absence of the petitioner due to his custody.

I have heard the learned counsel for the petitioner on interim bail.

The aforesaid circumstances which have been stated by the learned counsel for the petitioner and reproduced above would suggest that indeed the entire family of the petitioner is in extreme circumstances and with the custody of the petitioner the lives of 8 persons of his family who are suffering from number of problems is being severely jeopardized.

Therefore, considering the aforesaid facts and circumstances and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to exercise its powers for grant of interim bail to the petitioner.

Consequently, the petitioner is directed to be released on interim bail for a period of three months subject to the satisfaction of the learned trial Court/Duty Magistrate concerned. The date and time of release and surrender shall be determined by the learned trial Court/Duty Magistrate concerned. After the expiry of three months from the release the petitioner shall surrender before the jail authorities.

Adjourned to 08.12.2022.”

A perusal of the aforesaid order and after hearing the learned counsel for the petitioner, it transpires that there are 8 members in the family of the petitioner and the father of the petitioner is 100% visually disabled whereas his mother is also 71 years of age being bed ridden due to hip joint fracture, his son met with an accident and had broken both his legs. His sister is a divorcee and handicapped and suffering from 75% permanent mental disability and the son of the aforesaid sister is also suffering from mental retardation to the extent of 75% as per PGI, Rohtak and the other two sons are studying.

From the aforesaid, it is clear that due to the incarceration of the petitioner, the lives of 8 persons of his family who are dependent upon him is being severely jeopardized and therefore the prayer of the petitioner for grant of regular bail in view of the aforesaid circumstances and in the light of Article 21 of the Constitution of India also carries weight.

As per both the learned counsel for the parties, the petitioner has already surrendered before the jail authorities concerned after the expiry of period of interim bail granted to him.

So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, both the learned counsel for the parties have stated that the petitioner has clean antecedents and is not involved in any other case. Apart from the same, 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 may abscond from justice. Hence, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain

satisfied and therefore the bar contained under Section 37 of the NDPS Act will not apply in the present case especially considering the aforesaid facts and circumstances and also in the light of Article 21 of the Constitution of India.

In view of the facts and circumstances as narrated above, 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 subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

January 05, 2023

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