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

CRM-M-40319-2022

Date of Decision: 23.02.2023

Sandeep Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Navjot Singh, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAAG, 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.65 dated 28.04.2021, under Sections 22 & 29 of the NDPS Act, 1985, registered at Police Station City Sangrur, District Sangrur.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 28.04.2021 and his total custody as of now is more than 1 year after excluding the period on which he was on interim bail which was granted by this Court. He further submitted that the petitioner may be considered for grant of regular bail because of the following reasons:-

1. The petitioner has already faced incarceration for more than one year and he is not involved in any other case and is having clean antecedents.

2. The charges in the present case were framed on 23.02.2022 and more than one year has elapsed but no prosecution witness has been examined and there is no justification as to why the prosecution witnesses have not cared to depose before the Court.

3. The petitioner was granted interim bail by this Court on 13.09.2022 for a period of three months on the ground that his 2 years old son is suffering from acute Leukemia and there is nobody to attend him and after considering the entire medical record and the medical condition of 2 years old child of the petitioner, who was subjected to chemotherapy, this Court had granted interim bail to the petitioner and thereafter, the interim bail was also extended from time to time and now on 20.02.2023, the petitioner has already surrendered before the Jail Authority, since the interim bail had already expired and now he is in custody.

On the other hand, Ms. Anju Sharma Kaushik, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for more than one year and almost one year has elapsed after the framing of the charges that no prosecution witness has been examined till date. She further submitted on instructions from SI Jaswinder Kaur, who is present in Court today that the petitioner is not involved in any other case. She has however opposed the grant of bail to petitioner on the ground that there was a recovery of 850 tablets of *Clovidol* from him, which falls in the category of commercial quantity under the NDPS Act, and therefore, 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 present is a case where the petitioner has already faced incarceration for more than one year. Charges in the present case were framed on 23.02.2022, but according to the learned counsel for the parties, almost one year has elapsed, but no prosecution witness has been examined.

During the course of arguments, a specific query was raised to the learned State counsel that as to what was the justification that for about one year, after the framing of the charges, no prosecution witness has been examined, she after seeking instructions from the officer, who is present in Court, could not give any justifiable reason for the same.

The Hon'ble Supreme Court in “Satender Kumar Antil Vs. Central Bureau of Investigation and another”, 2022(10) SCC 51, dealt in detail the issue with regard to the repeated adjournments in the light of Article 21 of the Constitution of India. 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, there is no justification coming forth as to why no prosecution witness has been examined for the last one year after the framing of the charges.

Apart from the above, the petitioner is stated to be having clean antecedents and is not involved in any other case. The petitioner is having 2 years old son, who is suffering from acute Leukemia and he is subjected to repeated chemotherapy. He was admitted to interim bail which was later on extended as well, but he had not committed any default while he was on interim bail and now he has surrendered back on time i.e. on 20.02.2023.

Therefore, considering the aforesaid totality of facts and circumstances of the present case, this Court is of the considered view that the petitioner deserves the concession of regular bail especially in view of the fact that he has already faced incarceration for more than one year and he is not involved in any other case. The rigor of Section 37 of the NDPS Act will not apply in the present case in view of the aforesaid conduct of the

prosecution witnesses where they did not even care to depose before the Court once they themselves have put the criminal law into motion and no justification has come forth as to why they have not deposed before the Court. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed especially in the light of Article 21 of the Constitution of India 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.

23.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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