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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44091-2022 (O&M)

Date of Decision: 02.02.2023

PREM SINGH @ PREMA

....Petitioner(s)

Versus

STATE OF PUNJAB

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S. Sidhu, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

CRM-4682-2023

The present application has been filed for placing on record copies of zimni orders passed by learned trial Court as Annexure P-5.

For the reasons recorded in the application, the same is allowed. Zimni orders are taken on record as Annexure P-5, subject to all just exceptions.

Main case

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 46 dated 15.04.2021, under Section 22 (C) and 29 of NDPS Act, registered at Police Station Sirhali, District Tarn Taran.

Learned counsel for the petitioner has submitted that the

petitioner is in custody from 17.04.2021 which is almost 1 years and 9 months and after the investigation of the case, the challan has been presented before the learned Special Judge on 08.10.2021 which is almost 1 year and 3 months ago. He submitted that it is a case where as per the allegation contained in the FIR itself, the police party had seen two persons including the petitioner who after looking at the police party kept one packet on the ground and started urinating and thereafter allegation was with regard to recovery of 800 tablets of Tramadol salt from the petitioner and 4200 tablets from the co-accused. He submitted that even as per the prosecution story, there was no recovery from the conscious possession of the petitioner but from the packet which was allegedly lying on the ground. He submitted that in fact the petitioner has been falsely implicated in the present case since he was earlier involved in one other case under the NDPS Act in which he has been acquitted.

Learned counsel for the petitioner referred to the zimni orders which he has attached from 08.10.2021 onwards from where it can be seen that for about 17 times the trial Court had adjourned the case only on the ground that the jail authorities did not produce the accused who is in custody. In between on 30.04.2022 the learned trial Court was even constrained to issue show-cause notice to the Jail Superintendent as to why proceedings for illegal confinement of the accused should not be initiated against him for not producing the accused who is facing trial and as such, the case could not be proceeded. Even on the next date the petitioner was still not produced but the other co-accused was produced and thereafter on 02.07.2022 and 12.09.2022 both the accused were produced by the jail

authorities and the matter was fixed for consideration on charge but on remaining 6 dates again they were not produced. He submitted that the net result of the same was that even till date the charges have not been framed against the petitioner and the petitioner has faced incarceration for 1 year and 9 months for no fault of the petitioner and it was only because of the fault of the jail authorities who did not produce the accused before the Court after filing of challan with a result that the matter is pending for a long time i.e. 1 year and 3 months. He submitted that despite show-cause notice being issued to the Jail Superintendent, they did not mend their ways. 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]*** to contend that repeated adjournments in such like situation seriously affect the Fundamental Rights under Article 21 of the Constitution of India and in view of the aforesaid facts and circumstances even if there was allegedly recovery of 800 tablets of Tramadol from the petitioner, although not from the conscious possession but the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in view of the aforesaid conduct of the jail authorities.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 17.04.2021 which is almost 1 years and 9 months and challan was presented on 08.10.2021 and thereafter for about 17 times, the matter was adjourned but the charges have not been framed till date.

On a query being raised to the learned counsel for the State as to what was the justification as to why repeatedly the accused was not produced despite production warrants and show-cause notice being issued

by the Court to the Jail Superintendent, she was not able to give any justification. However, she has opposed the grant of bail to the petitioner on the ground that since the recovery from the petitioner was 800 tablets of Tramadol which is marginally higher than the commercial quantity as defined under the NDPS Act, 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 for 1 year and 9 months. The charges have not been framed as of date. The challan was presented on 08.10.2021 and thereafter as per the zimni orders about 17 times the matter was adjourned by the trial Court because of the lapse on the part of the jail authorities since they did not produce the accused and even at one point of time, the learned trial Court was constrained to issue show-cause notice to the Jail Superintendent. The net result of the same was that the custody of the petitioner was perpetuated because of the fault of the jail authorities. However, the fact remains that the total incarceration of the petitioner is 1 year and 9 months and till date even the charges have not been framed. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has taken serious note of such like of unwarranted adjournments which seriously affect the Fundamental Rights of the accused persons particularly in view 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”.

The alleged recovery from the petitioner although not from the conscious possession even as per the prosecution was 800 tablets of Tramadol salt which is marginally higher than the commercial quantity. The petitioner is stated to be not involved in any other case. However, in one case under the NDPS Act, he has since been acquitted. He has faced incarceration for 1 year and 9 months and charges have not been framed due to fault of jail authorities. Recovery is stated to be not from conscious possession of petitioner. This Court is thus *prima facie* satisfied at this stage at least that the petitioner is not guilty of offence in the light of Article 21 of the Constitution of India. Furthermore, 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. 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 and especially in the light of Article 21 of the Constitution of India, 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.

02.02.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No