

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

CRM-M No.48195 of 2022 (O&M)

Date of Decision: 15.03.2023

Tajinder Singh @ Sonu

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sukhbir Maandi, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, 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 FIR No.48 dated 01.06.2021, under Section 22 (later on added) 61, 85 of Narcotic Durgs and Psychotropic Substances Act, 1985, registered at Police Station Dhilwan, District Kapurthala.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 09.11.2021 which is 1 year and 4 months and the petitioner was granted interim bail in between. Since the FSL was not received and after the receipt of the FSL, he surrendered before the police authorities well within time. He submitted that it is a case where the petitioner is not involved in any other case and the petitioner is a handicapped person and is having only one leg. The allegation against the petitioner is that he was going on a motor cycle and when he saw the police party, he turned around and he threw away a packet which contained 137 intoxicant tablets which although falls in the category of commercial quantity under the NDPS Act but the petitioner is having clean antecedents and the petitioner has been falsely

implicated in the present case. It is submitted that in fact as per the FIR dated 01.06.2021, the time of occurrence has been shown to be 15.07 hours to 16.00 hours which is the evening, whereas the petitioner was picked up from his house in the morning regarding which a CCTV footage is also stated to be there which would show that some Police Officers had come to the street of the petitioner in the morning at 10.00 am. He further submitted that although more than one year has elapsed but only two witnesses have been examined in the present case out of which one is a person who had only taken away the contraband and deposited it to the FSL and was not the material witness. However, witnesses namely Gurdev Singh who was the attesting witness in the recovery memo, has been examined but neither the person namely, ASI Sarbjit Singh who was with the police party, has been examined nor any other material witnesses has been examined despite the fact that more than one year has elapsed. He further submitted that this Court vide order dated 21.10.2022 had taken note of the plea of the petitioner with regard to false implication and had also directed the Inspector General of Police to look into this issue. An affidavit has been filed by the SSP, District Kapurthala in which it is stated that a Special Investigating Team has been formed after passing of the order by this Court and in the CCTV footage, it could be seen that some uniformed persons had come in the morning at about 10.15 am but neither the police vehicle nor the police officials could be ascertained as to from which place they had come and therefore the ascertainment of the CD according to the police, was not clear. Learned counsel further submitted that in this era of technological development, such a plea which is taken by the SSP is not plausible and rather it is the case of the petitioner that the police party had come to the house at

around 10 am whereas the FIR was lodged in late afternoon. He further submitted that even from the affidavit filed by the SSP, it cannot be ruled out that the petitioner committed the offence.

Learned counsel further submitted that after more than one year, the charges were framed and even the author of the FIR who was heading the police party did not care to depose before the Court as a result whereof, the petitioner had to face incarceration for more than 01 year and 04 months for no fault of his, especially when he is not involved in any other case. Learned counsel also referred to 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 keeping in view of this judgment, long trials affect the fundamental rights of the accused person(s) under Article 21 of the Constitution of India. He further submitted that in view of the aforesaid judgment, the rigour of Section 37 of the NDPS Act would not apply to present petitioner and particularly, when the petitioner is a handicapped person and is having only one leg. He further submitted that there was no recovery from the petitioner even as per the prosecution story and even as per the FIR the packet was allegedly thrown by the petitioner and was found from the ground and therefore the absence of any recovery from the the petitioner, the rigour of Section 37 of NDPS Act, would not apply to the petitioner in this case.

On the other hand, learned State counsel has submitted on instructions from ASI-Sarbjit Singh that it is correct that the petitioner is in custody since 09.11.2021 which is more than 01 year and 04 months and charges were framed on 09.03.2022, which is more than 01 year. She further submitted on instructions that it is also correct that the petitioner is not

involved in any other case. However, she opposed the grant of bail to the petitioner on the ground that the case of the petitioner is covered under Section 37 of the NDPS Act. So far as the affidavit filed by the SSP in pursuance of the orders passed by this Court, is concerned, she submitted that when the CD was watched by the experts, the identity of the uniformed persons or the vehicle, could not be ascertained and therefore, it cannot be said that the petitioner was falsely implicated in the present case. She further submitted that so far as the physical status of the petitioner that he is having only one leg, is concerned, the same is also correct as per the affidavit filed by the SSP but the petitioner was able to ride/ drive a motor cycle because he was having an artificial leg and therefore it cannot be said that the petitioner cannot ride/ drive a motor cycle.

I have heard learned counsel for the parties.

It is a case where the petitioner has faced incarceration for more than one year and four months. More than one year has elapsed but only two witnesses have been examined out of which one witness is a person who had allegedly attested the recovery memo and one PW was a person who only carried the samples to the Forensic Laboratory. However, the author of the FIR who was allegedly heading the police party has not been examined till date. During the course of arguments, a specific query was raised to the learned State counsel as to what was the justification as to why the prosecution witnesses are not deposing before the Court despite the fact that more than 1 year has elapsed after framing of the charges, the learned State counsel was not able to justify the same. Apart from the above facts, a perusal of the affidavit filed by the SSP would show that the CD which the petitioner has given to the police, was seen by the experts and according to the experts, the persons who had come at 10.15 am on the street of the house of the petitioner was there with

vehicle and therefore, at this stage, this Court does not wish to go into the merits of the present case because the aforesaid issue is a matter of evidence which can be seen at the time of trial but at the same time, it is not the case of the police that the aforesaid Police Officers were not their Police Officers. Therefore, the effect of Section 37 of the NDPS Act has to be seen in the light of peculiar facts and circumstance of the present case.

The petitioner is stated to be not involved in any other case and is having clean antecedents and he is already in custody since 01 year and 04 months. No justification has come forward as to why the main material witness has not been examined despite the fact that more than one year has elapsed after framing of the charges. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has dealt with the serious issue with regard to prolonged trials and in the light 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 view of the peculiar facts and circumstance of the present case whereby not only the trial has been delayed, because of non appearance of the PWs but is also case where as per the affidavit filed by SSP it nowhere mentions that the police vehicle was not belonging to their Department. At the cost of repetition, this Court is again clarifying that this Court does not wish to make any observations on the merits of the case but it is only for the purpose of considering the grant of bail of the petitioner, at this stage, the aforesaid peculiar facts and circumstance would lead this Court to have a prima facie view of this case that the petitioner is not guilty of offence.

Apart from the above, the petitioner is stated to have clean antecedents and is not involved in any other case and 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. The custody of the petitioner would also be the relevant factor which is of more than 01 year 04 months. 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 facts and circumstances of the present case and 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.

15th March, 2023

Sonia Puri

(JASGUPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No