

218

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

CRM-M-47846-2022

Date of Decision: 30.01.2023

Mohinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, 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.41 dated 21.02.2021, under Section 15 of the N.D.P.S. Act, 1985, registered at Police Station Sadar Fazilka, District Fazilka.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody for a period of 1 year, 9 months and 13 days. He further submitted that earlier the petitioner was granted interim bail by this Court for a period of 8 weeks, and thereafter, he had surrendered back to the Jail Authorities within time. He also submitted that it is a case where the petitioner has been falsely implicated only because of the reason that there were two other cases against the petitioner and as per the allegations contained in the FIR, the police party who was having a secret information

qua three persons including the petitioner allegedly recovered 60 kgs. of *Poppy Husk* from three persons including the petitioner. He further submitted that although the aforesaid quantity falls in the category of commercial quantity under the provisions of NDPS Act but the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the peculiar facts and circumstances. He further submitted that charges in the present case were framed on 27.08.2021, which is about 1 year and 5 months ago and till date no prosecution witness has been examined. He also supplied the photocopies of the zimni orders of the learned trial Court wherein about 10 adjournments have been granted after the framing of charges with long dates and every time the prosecution witnesses were summoned and rather on the last date of hearing i.e. on 03.01.2023, the bailable warrants were also issued against two official witnesses including ASI Kewal Krishan, who is the author of the FIR and was part of the police party. He further submitted that it is a case under the provisions of NDPS Act whereby the police has set the criminal law into motion itself and when the matter was fixed before the trial Court for prosecution evidence and despite repeated adjournments for a long period of 1 year and 5 months, they do not step into the witness box and depose for the reasons best known to them. He further submitted that since it is a case of false implication and they are now evading the process of Court and ultimately, the trial Court had to issue bailable warrants against the police officials who set the criminal law into motion. Learned counsel for the petitioner has relied upon the latest judgment of the Hon'ble Supreme Court passed in “Satender Kumar Antil Vs. Central Bureau of Investigation and

another”, 2022(10) SCC 51, to contend that the net result of the aforesaid conduct of the police officials was long incarceration of the petitioner for a period of 1 year, 9 months and 13 days and he has remained in custody for no fault of his own but only because of the conduct of the police officials as aforesaid. He further submitted that in view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. He also submitted that mere pendency of the two FIRs against the petitioner cannot operate as a bar for considering the bail petition of the petitioner.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for a period of 1 year, 9 months and 13 days and when he was granted interim bail, he had surrendered to the Jail Authorities in time. She has, however, 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. So far as the stage of the trial is concerned, she stated that in view of the zimni orders as supplied by the petitioner during the course of proceedings about 1 year and 5 months have elapsed but no prosecution witnesses have been examined till date.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 1 year, 9 months and 13 days. The alleged recovery from the petitioner and the other two co-accused was 60 kgs. of *Poppy Husk*, which undoubtedly falls within the commercial quantity under the NDPS Act. The facts and circumstances of the present case and perusal of the zimni orders as produced by the learned

counsel for the petitioner during the course of proceedings would show that for 1 year and 5 months after the framing of charges, no prosecution witness has been examined despite the fact that for number of times, they were summoned by the trial Court and ultimately, the trial Court was constrained to summon them throughailable warrants and those officials were none others but the official witnesses including the author of the FIR i.e. ASI Kewal Krishan. In such like NDPS matters, the witnesses are by and large official witnesses except for other independent witnesses or private witnesses but the case stands on the basis of official witnesses, who themselves set the criminal law into motion. During the course of arguments, a query was raised to the learned DAG, Punjab as to what was the justification as to why for one year and five months, the prosecution witnesses, who are the official witnesses did not turn up and depose before the Court, she could not offer any explanation or justification with regard to the same. The Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)*** observed 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 net result of the aforesaid factual position was that after the framing of the charges for 1 year and 5 months, no prosecution witness has been examined and the petitioner had to face incarceration for 1 year, 9 months and 13 days for no fault of his own. The rights of the petitioner are also protected under Article 21 of the Constitution of India, which has been so discussed by the Hon'ble Supreme Court in the aforesaid judgment. Therefore, considering the conduct of the police officials, who did not step into the witness box for 1 year and 5 months despite repeated summons and evenailable warrants issued to them, this Court would, therefore, draw an adverse inference against the prosecution which leads this Court to have *prima facie* reasons to believe that the petitioner is not guilty of offence at least at this stage. Furthermore, it is neither the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is

released on bail then he may abscond or flee from justice or may repeat the offence. Therefore, both the ingredients contained under Section 37 of the NDPS Act for making a departure from the bar contained therein remain satisfied.

In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed 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.

30.01.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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