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

CRM-M-49246-2022

Date of Decision: 09.03.2023

Sulinder Singh @ Chhindu @ Shalinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Namparkash S. Sandhu, Advocate,
for the petitioner.

Mr. Sandeep Chopra, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.25 dated 27.02.2021, under Section 21(c), 29, 61 & 85 of the NDPS Act, 1985, registered at Police Station Baghapurana, District Moga.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 27.02.2021, which is more than 2 years. He further submitted that in the present case the allegations against the petitioner were with regard to recovery of 500 grams of *Heroin* and the learned trial Court framed the charges on 08.08.2021 and thereafter, the matter was adjourned for about 20 times and the prosecution witnesses, who are the police officials, did not care to depose before the Court despite the fact that they were served and consequently the learned Judge, Special

Court had to issue bailable warrants for about six times and also had to issue warrants of arrest about nine times and even on one date, even for the purpose of ensuring the presence of prosecution witness, even the salary of the prosecution witness was attached. He also submitted that it is a case pertaining to NDPS Act and the petitioner is not involved in any other case under the NDPS Act but earlier he was involved in one case under Section 379-B of the IPC which is pending trial and that was the only reason that the petitioner has been falsely implicated in the present case. He further submitted that due to the fault of the prosecution witnesses the petitioner had to suffer incarceration for more than two years.

Learned counsel for the petitioner has also supplied the photocopy of the zimni orders which were passed by the learned Special Judge after the framing of the charges. Photocopy of these orders are hereby taken on record and marked as 'X'. While referring to the aforesaid orders, learned counsel for the petitioner has submitted that the material witnesses including the complainant, namely, ASI Charanjit Singh were served even prior to 08.09.2021 immediately after the framing of the charges and thereafter, the Court had to issue warrants of arrest against the aforesaid persons, who had put the criminal law into motion and the reason for the same was that the present case was planted upon the petitioner. He has referred to the judgment passed by the Hon'ble Supreme Court in **"Satender Kumar Antil Vs. Central Bureau of Investigation and another"**, **2022(10) SCC 51**, wherein the scope of Article 21 of the Constitution of India has been discussed *vis-a-vis* repeated adjournments by the learned trial Court. He has, therefore, submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Sandeep Chopra, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for more than two years and now four witnesses have been examined out of which three have been examined fully and one witness has been examined partly. He further submitted that it is also correct that the petitioner is not involved in any other case under the NDPS Act but is involved in one case under Section 379-B of the IPC. He has however opposed the grant of regular bail to the petitioner on the ground that there was a recovery of 500 grams of *Heroin* 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.

It is a case where the petitioner has faced incarceration for more than two years. The petitioner is not involved in any other case under the NDPS Act but involved in one more case under Section 379-B of the IPC. The alleged recovery from the petitioner was 500 grams of *Heroin*. The charges in the present case were framed on 08.08.2021, which is almost 1½ years ago. A perusal of the zimni orders produced by the learned counsel for the petitioner would show that for about 20 times repeated adjournments were granted and out of the aforesaid judgments for about six times bailable warrants were issued against the prosecution witnesses, who are none others but the material witnesses including the complainant, namely, ASI Charanjit Singh. Not only this, the trial Court had to issue warrants of arrest against those prosecution witnesses for nine times and even on one date, the salary of prosecution witness was attached which was subsequently released.

During the course of arguments, a specific query was raised to

learned DAG, Punjab as to what is the justification with regard to non-appearance and failing to appear despite number of times, bailable warrants and warrants of arrest were issued to the prosecution witnesses to which he could not justify the same.

In the matters pertaining to NDPS Act essentially the prosecution witnesses are the police officials unless some independent witnesses are to be examined. These are the police officials who set the criminal law into motion and when the matter is taken up at the time of trial, it is duty of the prosecution witnesses to depose before the Court. However, in the present case, surprisingly for nine times warrants of arrest were issued against those police officials, who set the criminal law into motion, for the purpose of securing their attendance so that they can depose before the Court and the trial may progress. For six times, bailable warrants were issued against the prosecution witnesses and once salary of one of the prosecution witnesses was also attached. It is not understandable as to why the prosecution witnesses did not depose before the Court, and therefore, the argument raised by the learned counsel for the petitioner that the present case was planted upon the petitioner cannot be ignored.

The Hon'ble Supreme Court in “**Satender Kumar Antil Vs. Central Bureau of Investigation and another**”, 2022(10) SCC 51, dealt with the sensitive 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 as aforesaid, the conduct of the police officials, who are the prosecution witnesses would lead this Court to draw an adverse inference against the prosecution even if at the later stage some of the prosecution witnesses have been examined. For the purpose of considering the effect of Section 37 of the NDPS Act, the aforesaid facts and circumstances and the conduct of the prosecution witnesses would definitely lead this Court to have reasons to believe at least at this stage and only for the purpose of considering the prayer of the petitioner for the grant

of regular bail that the petitioner is not guilty of an offence.

So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not 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 repeat the offence or may abscond or flee from justice especially in view of the fact that the petitioner is not involved in any other case under the NDPS Act. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid totality of the facts and circumstances of the present case especially in the light of Article 21 of the Constitution of India and considering the total custody of the petitioner, which is more than two years, this Court deems it fit and proper to grant regular 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.

09.03.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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