

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218+220

CRM-M- 50447 of 2022 (O&M)

Date of Decision:25.01.2023

Mohit @ DP @ Mohit Kukreja

....Petitioner

Versus

State of Punjab

.....Respondent

2)

CRM-M-53554 of 2022

Sandeep Singh @ Saini

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Sharma, Advocate,
for the petitioner in CRM-M-50447-2022.

Mr. Arjunveer Sharma, Advocate,
for the petitioner in CRM-M-53554 of 2022.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

Both the cases are taken up together for final disposal with the consent of learned counsel for the parties as both arise out of the same FIR and the prayer in both the cases is for the grant of regular bail in FIR No.0063 dated 04.06.2021, under Sections 22, 25, 29, 61, 85 of the NDPS Act, registered at Police Station Barnala, District Barnala.

CRM-M- 50447 of 2022 is the fourth successive bail petition which

has been filed by the petitioner namely Mohit @ DP @ Mohit Kukreja whereas CRM-M-53554 of 2022 is the third successive bail petition which has been filed by the petitioner namely Sandeep Singh @ Saini.

Earlier both the petitioners had approached this Court for grant of regular bail and in their first bail petitions, a detailed order was passed by this Court while dismissing the bail petitions of both the petitioners and at that point of time, the FIR was still at the investigation stage and that was one of the reasons for dismissal of the bail petitions. Thereafter, another bail petition was filed which was also dismissed and thereafter when the petitioner filed petition for bail, the same was dismissed as withdrawn.

As per the prosecution story, the police had apprehended one Amandeep Singh @ Tili and from him 2000 tablets of Tramadol were recovered which constituted 711.82 grams which fell within the category of commercial quantity. Thereafter, when the matter was investigated by the police, the name of Mohit @ DP @ Mohit Kukreja (petitioner in CRM-M- 50447 of 2022) was nominated on the basis of a second disclosure statement of a co-accused namely Vinod Kumar whose name was also nominated earlier on the basis of disclosure statement.

So far as the petitioner Sandeep Singh @ Saini (petitioner in CRM-M-53554 of 2022) is concerned, his name was nominated on the basis of third disclosure statement of Mohit @ DP @ Mohit Kukreja who is the present petitioner in CRM-M-50447 of 2022.

From the aforesaid Mohit @ DP @ Mohit Kukreja, after his nomination and the matter was investigated and further no recovery was effected from him and he is also stated to be not involved in any other case and so far as the

petitioner Sandeep Singh @ Saini is concerned, there was recovery of 72 tablets of Tramadol from him and he is stated to be involved in one more case under the NDPS Act.

Learned counsel for the petitioner has submitted that the petitioner Mohit @ DP @ Mohit Kukreja (in CRM-M-50447 of 2022) is in custody from 09.08.2021 and the learned counsel for the petitioner has submitted that the petitioner Sandeep Singh @ Saini (in CRM-M-53554 of 2022) is in custody from 05.08.2021 which is almost 1½ years. They have submitted that although the present petitions are the successive bail petitions but considering the peculiar facts and circumstances of the present case, they may be considered for the grant of regular bail. Both the learned counsels have raised the following arguments:-

1) Both the petitioners have faced incarceration for about 1½ years and both the petitioners have been nominated on the basis of disclosure statements and that too second and third disclosure statements of the co-accused and from the petitioner namely Mohit @ DP @ Mohit Kukreja there has been no recovery even till date and from the petitioner Sandeep Singh @ Saini there had been alleged recovery of 72 tablets of Tramadol. They submitted that the disclosure statement of a co-accused *per se* is not admissible in evidence especially in view of the judgment of the Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1** and since they have already faced incarceration for about 1½ years, they deserve the concession of regular bail in view of the aforesaid facts and circumstances.

2) The charges in the present case were framed by the learned trial Court on 22.12.2021. Thereafter, about 13 adjournments have been granted by the

learned trial Court and during the course of arguments, learned counsels have supplied the photocopies of the zimni orders which have been passed by the learned trial Court and the same are hereby taken on record as Mark-X. They have submitted that a perusal of the aforesaid zimni orders after framing of the charges by the learned trial Court would show that for six times bailable warrants have been issued earlier to ASI Gurpal Singh and SI Baljeet Singh. For two times non-bailable warrants have been issued against them by the learned trial Court and till date no prosecution witness has been examined at all by the learned trial Court. However, at one stage some of the prosecution witnesses have been given up by the prosecution itself. They submitted that so far as SI Baljeet Singh is concerned, he is the person who was the author of the FIR and who allegedly informed the police station which culminated into lodging of the FIR and he is the person who is the most material witness and against him number of times bailable warrants have been issued by the learned trial Court. So far as the other material witness namely ASI Gurpal Singh is concerned, he is the investigating officer in the present case and qua him also about six times bailable warrants and thereafter two times non-bailable warrants have been issued by the learned trial Court but for the reasons best known to them, they did not choose to depose and come forward for deposing before the learned trial Court. They have submitted that in fact both the petitioners have been falsely implicated in the present case and the aforesaid conduct of the police officials would show that in fact the petitioners have been falsely implicated in the present case. Learned counsel further referred to a judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51** to contend that repeated adjournments have been

granted by the learned trial Court and the delay has been caused by the prosecution itself and these aforesaid persons are the persons who are the official witnesses and because of whom the criminal law was set into motion and there was no justification for these officials to have absented themselves despite the fact that at the initial stage they were served and consequently the learned trial Court was constrained to issue repeatedailable warrants and non-ailable warrants against them. They further submitted that the net result was that the petitioners had to face incarceration for about 1½ years for no fault of their own.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that both the petitioners are in custody for about 1½ years and till date no prosecution witness has been examined. She further submitted that one of the petitioner namely Sandeep Singh @ Saini is involved in one more case under the NDPS Act and since the recovered quantity from the co-accused Amandeep Singh @ Tili falls within the category of commercial quantity and 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 period of custody of about 1½ years is not disputed by the learned State counsel and it is also not in dispute that none of the witnesses have been examined till date despite the fact that the charges in the present case were framed on 22.12.2021 by the learned trial Court.

So far as the first argument raised by learned counsels for both the petitioners is concerned, there is no dispute that the names of both the petitioners were nominated on the basis of disclosure statements of the co-accused and

therefore in the absence of any other co-relating factor as a link evidence, the disclosure statements of the co-accused could not be *per se* admissible in evidence in view of the ratio of the aforesaid judgment of the Hon'ble Supreme Court in ***Tofan Singh's*** case (supra).

However, for the purpose of considering the prayer of both the petitioners in both the petitions especially in the light of Section 37 of the NDPS Act wherein a bar has been created, the conduct of the police officials has to be considered in the light of the facts and circumstances as stated by learned counsel for the petitioners and the photostat copies of the zimni orders which have been supplied during the course of proceedings. A perusal of the aforesaid orders would show that in fact these aforesaid two persons namely SI Baljeet Singh and ASI Gurpal Singh were repeatedly summoned for about six times by way of bailable warrants and two times by way of non-bailable warrants. ASI Gurpal Singh was summoned right from the beginning whereas SI Baljeet Singh was summoned thereafter, but the fact remains that there is no justification as to why the Court was compelled to issue repeated warrants for their presence once the criminal law was itself set into motion by those police officials. During the course of arguments, a query was raised to learned State counsel as to what is the justification for the same, she was not able to justify the same.

The Hon'ble Supreme Court in ***Satender Kumar Antil's*** case (supra) discussed this serious issue in the light of Article 21 of the Constitution of India and the relevant portion of 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.”

After hearing the learned counsel for the parties, this Court while considering the prayer of the petitioner in the light of Section 37 of the NDPS Act, is of the view that considering the aforesaid facts and circumstances, this Court would draw an adverse inference against the prosecution and the facts and circumstances would in fact lead this Court to have *prima facie* reasons to believe at least at this stage that the petitioners are not guilty of the 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 argued by the learned State counsel that in case the petitioners are released on bail, then

they may repeat the offence. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

Therefore, in view of the aforesaid totality of facts and circumstances, this Court deems it fit and proper to grant the concession of regular bail to both the petitioners. Consequently, both the petitions are allowed. The petitioners shall be released on regular bail, if not required in other case, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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 these two petitions.

(JASGURPREET SINGH PURI)
JUDGE

January 25, 2023
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No