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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51529-2022 (O&M)

Date of Decision: 06.02.2023

Gurcharan Singh @ Pappu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.S. Sandhu, 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 the grant of regular bail to the petitioner in FIR No. 062 dated 24.04.2021, under Section 22 (c) of NDPS Act, registered at Police Station Kotbhai, District Sri Muktsar Sahib.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 24.04.2021 which is more than 1 year and 9 months and after the investigation of the case, the challan has been presented before the competent Court on 19.08.2021 and thereafter charges were framed on 13.09.2021. He submitted that after the framing of the charges 14 adjournments were granted by the learned trial Court and till date no prosecution witness has been examined despite the fact that almost 1 year and 4 months have elapsed after the framing of the charges. Learned counsel for the petitioner has supplied photocopies of the zimni orders passed by

the learned trial Court after the framing of the charges during the course of proceedings. The same are taken on record as Mark-X. Learned counsel while referring to the aforesaid zimini orders submitted that every time when an order was passed by the learned trial Court, the same was for the purpose of service upon the prosecution witnesses and every time they remained unserved and repeated summons were issued to them. He submitted that it is not a case of once, twice or thrice but it is a case where the trial Court had to adjourn the case for 14 times only for the purpose of service upon the prosecution witnesses and the prosecution witnesses are those persons who themselves set the criminal law in motion and they themselves are evading the service. He submitted that in fact in the present case the petitioner has been falsely implicated because he was earlier involved in five more cases under the NDPS Act and the prosecution story in the present case is totally improbable and false. He submitted that even as per the FIR itself, the police party who was in a private car saw the petitioner who threw away the packet of tablets and there was alleged recovery of 900 tablets of Tramadol which comes to about 377 grams and which is marginally higher than the commercial quantity of 250 grams as provided under the NDPS Act. He submitted that be that as it may, the aforesaid conduct of the police officials who have themselves set the criminal law into motion would show that they have been evading the service for long period of 1 year and 4 months and the net result of the same is that the petitioner had to face to incarceration for 1 year and 9 months for no fault of his own despite the fact that the charges were framed on 13.09.2021. He submitted that in view of the aforesaid

circumstances the case of the petitioner will not be hit by the bar contained under Section 37 of the NDPS Act and particularly in view of the fact that his rights under Article 21 of the Constitution of India have been infringed by none other than those police officials who themselves set the criminal law into motion and they themselves evaded the service of the Court with a result that the trial Court had to adjourn the case for about 14 times for this purpose only. He also 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] in this regard.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 24.04.2021 which is more than 1 year and 10 months and challan was presented on 19.08.2021 and the charges have been framed on 13.09.2021 but till date no prosecution witness has been examined.

On a query being raised to the learned counsel for the State as to what is the justification as to why those police officials who are the material prosecution witnesses and who allegedly apprehended the petitioner evaded the service with a result that the trial Court had to adjourn the case for about 14 times, she could not offer any explanation even after taking instructions from the police officials who were present in the Court. She submitted that the petitioner is involved in five more cases under the NDPS Act. She has however opposed the grant of bail to the petitioner on the ground that since the recovery was of a 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.

It is a case where the petitioner has already faced incarceration for 1 year and 9 months and charges were framed on 13.09.2021 which is almost 1 year and 4 months. As per the zimini orders which have been supplied to the Court by the learned counsel for the petitioner during the course of arguments for 14 times the trial Court had to adjourn the case only for the purpose of effecting service upon the prosecution witnesses and every time report came that they were unserved. It is very surprising that those prosecution witnesses who were the police officials and had set the criminal law into motion themselves have been evading service and do not care and bother to depose before the Court. 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 repeated 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”.

In the present case, a perusal of the zimini orders would show that for about 14 times the trial Court had to adjourn the case and every time it was kept for service of summons upon the prosecution witnesses who are none other than those persons who had set the criminal law into motion with the result that the petitioner had to face incarceration for 1 year and 9 months. The mere fact that the petitioner is involved in five more cases under the NDPS Act cannot disentitle the petitioner for grant of bail in the present case. The conduct of the police officials as aforesaid would therefore lead this Court for making an adverse inference against the police officials/prosecution witnesses and also therefore lead this Court to *prima facie* satisfied at least at this stage 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.

06.02.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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