

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-59343 of 2022

Date of Decision:21.03.2023

Satpal Singh @ Satta

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amandeep Chhabra, 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.17 dated 31.01.2021, under Sections 22 and 25 of the NDPS Act, 1985 registered at Police Station Sardulgarh, District Mansa.

It is submitted by the learned counsel for the petitioner that it is a case where the petitioner is in custody for about 2 years and 2 months and after the completion of the investigation of the case, final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court and thereafter charges were framed by the learned trial Court on 04.02.2022 which is about one year and 1½ months and the next date of hearing is fixed for 05.04.2023. He submitted that as per the allegations contained in the FIR the petitioner alongwith the other co-accused were on the motorcycle and in between there was

a plastic bag from where an alleged recovery of 855 tablets of Tramadol was made. He submitted that it is a case where the petitioner has been falsely implicated by the police by planting a case upon the petitioner and it was due to political enmity and the petitioner has clean antecedents and is not involved in any other case. To substantiate his arguments, he submitted that after the framing of the charges on 04.02.2022 which is more than one year, no prosecution witness has been examined till date despite the fact that the entire criminal law was set into motion by the police officials themselves who had apprehended the petitioner. During the course of arguments, learned counsel for the petitioner has supplied photostat copies of the zimni orders which have been passed by the learned trial Court after the framing of the charges. These orders are hereby taken on record as Mark-X.

While referring to the aforesaid orders, learned counsel for the petitioner submitted that for about 13 times, the learned Judge, Special Court adjourned the matter only for the purpose of summoning of the prosecution witnesses despite the fact that the material witnesses have already been served at the initial stages. Out of the aforesaid adjournments, for three times these prosecution witnesses were summoned throughailable warrants and there is no justification for not deposing before the Court despite the fact that for more than one year has elapsed after the framing of the charges that they have not cared to appear before the Court and rather they have evaded the process of the Court and for that purpose the learned trial Court had to issueailable warrants against them. He submitted that the net result of the same was that the petitioner who has clean antecedents and is not involved in any other case had to face incarceration for a long period of two years and two months for no fault of his and the prolonged

delay in trial is purely attributable to the prosecution and not to the petitioner. He submitted that in view of the aforesaid peculiar facts and circumstances, the petitioner is entitled for the grant of regular bail and the rigor of Section 37 of the NDPS Act will not apply to the present petitioner as well. He also 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 the repeated adjournments of such kind wherein even bailable warrants issued against the police officials require serious implications in the light of Article 21 of the Constitution of India.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted, on instructions from ASI Jarnail Singh, that it is correct that the petitioner has faced incarceration for about two years and two months and the charges in the present case were framed on 04.02.2022 and no prosecution witness has been examined till date. She has also stated that it is also correct that the petitioner has clean antecedents and is not involved in any other case. She has however opposed the grant of bail to the petitioner on the ground that the quantity which was recovered from the petitioner and the other co-accused is 855 tablets of Tramadol which falls within the commercial quantity under the NDPS Act and therefore the rigor of Section 37 of the NDPS Act will apply in the present case.

I have heard learned counsel for the parties.

The dates as aforesaid are not in dispute. The petitioner has already faced incarceration for about two years and two months. The charges in the present case were framed on 04.02.2022 and no prosecution witness has been examined till date. The petitioner has clean antecedents and is not involved in any other case. A

perusal of the zimni orders (Mark-X) which have been produced today in the Court by learned counsel for the petitioner would show that for 13 times the learned trial Court had adjourned the matter for summoning the prosecution witnesses and some of the prosecution witnesses were served at the first instance and for at least three times the Court was constrained to issueailable warrants against the police officials who are the prosecution witnesses in the present case.

The Hon'ble Supreme Court in *Satender Kumar Antil's* case (supra) had discussed various effects of repeated adjournments in the light of Article 21 of the Constitution of India. 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”. ”

In the facts and circumstances of the present case, where the police officials who themselves had set the criminal law into motion had evaded the process of the Court despite three times bailable warrants been issued to them. During the course of arguments, a specific query was raised to learned State counsel as to what is the justification or any reason for the same, to which she was not able to justify the same even after obtaining instructions from the police official who is present in the Court. Therefore, the aforesaid conduct of the police officials who set the criminal law into motion and evaded the process of the Court for more than one year after the framing of the charges would lead this Court to have *prima facie* reasons to believe, at least at this stage, for the purpose of considering 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, both the learned counsel for the parties have stated that the petitioner has clean antecedents and is not involved in any other case. Apart from the same, 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. Hence, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied and therefore the bar contained under Section 37 of the NDPS Act will not apply in the present case especially considering the aforesaid facts and circumstances and also in the light of Article 21 of the Constitution of India.

In view of the aforesaid facts and circumstances, this Court is of the

view that the petitioner deserves the concession of regular bail. 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.

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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 21, 2023

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