

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-60479 of 2022 (O&M)

Date of Decision:23.02.2023

Ajay Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manjinder Singh Saini, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

CRM-8968 of 2023

Vide this application, the petitioner seeks permission to place on record the zimni orders which have been passed by the learned trial Court as Annexure P-4.

For the reasons mentioned in the application, the same is allowed and the zimni orders which have been passed by the learned trial Court, are taken on record as Annexure P-4 subject to all just exceptions.

Main case

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.0148 dated 28.05.2021, under Section 22(c) of the NDPS Act, 1985 registered at Police Station Gobindgarh Mandi, District Fatehgarh Sahib, Punjab.

It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 28.05.2021, which is almost 1 year and 9 months. He submitted that after the completion of the investigation, final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court and the charges in the present case were framed by the learned Judge, Special Court on 09.12.2021 and thereafter the trial has commenced. He submitted that as per the allegations, the petitioner alongwith the other co-accused was apprehended by ASI Mohan Singh and he had called the other police party which was headed by one another ASI and also members of the other police party and thereafter as per the allegations 2500 tablets of Alprazolam of 0.5 mg were recovered from a bag from the petitioner and the other co-accused. He further submitted that in fact the present case has been planted upon the petitioner and even the calling of the gazetted officer was also a futile exercise because the case was planted upon the petitioner.

Learned counsel for the petitioner submitted that the petitioner has clean antecedents and is not involved in any other case and it was only because of the personal enmity that he has been falsely implicated in the present case. To substantiate his arguments, he submitted that it is a case where the police officials who had themselves set the criminal law into motion did not even care to depose before the learned trial Court. While referring to the zimni orders which he has placed on record before this Court, he submitted that after the framing of the charges, the learned trial Court had adjourned the case for about 26 times till date and out of which for about 18 times the prosecution witnesses were summoned repeatedly.

In addition to above, out of the aforesaid 18 times rather for number of times bailable warrants were issued against the police officials who were the part of the police party and including one ASI Sapinder Singh who was the author of the present FIR and he is the investigating officer in the present case. While referring to the zimni orders, he further submitted that at the initial stages one ASI Mohan Singh was examined in-chief and ASI Mohan Singh is a person who had allegedly informed the police party which was headed by ASI Sapinder Singh. After the aforesaid ASI Mohan Singh was examined in-chief, he did not appear for cross-examination and for the purpose of securing his presence for cross-examination, the learned trial Court had to issue bailable warrants against him. He submitted that same thing happened with ASI Sapinder Singh who was the material witness being author of the FIR and heading the police party and he was also initially examined in-chief but again for the purpose of cross-examination, he was also summoned through bailable warrants for four times and it was only now in the month of January 2023 that ASI Mohan Singh has now been cross-examined but so far as ASI Sapinder Singh is concerned, he has still not been cross-examined as per the zimni orders. He submitted that the aforesaid totality of the circumstances would show that it is not a case that the police officials who had set the criminal law into motion were not aware about the proceedings or that there were some reasons beyond their control but it is a case where they themselves deposed before the Court only for the purpose of examination-in-chief but for the purpose of cross-examination, the learned trial Court was constrained to issue bailable warrants against them for not one time but four times. He submitted that net result of the same was that the petitioner who is otherwise having clean

antecedents and not involved in any other case had to face incarceration for about 1 year and 9 months for no fault of the petitioner and only because of the aforesaid conduct of the police officials for which no justification has come forth. He submitted that in this way the bar contained under Section 37 of the NDPS Act will not apply in the present case and has 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 in this regard.

On the other hand, Ms. Anju Sharma Kaushik, learned DAG, Punjab has stated that it is correct that the petitioner is in custody from 28.05.2021, which is almost 1 year and 9 months and there was an alleged recovery of 2500 tablets of Alprazolam of 0.5 mg from the two bags which were carried by two accused persons including the petitioner. She submitted 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 prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

The petitioner has already faced incarceration for about 1 year and 9 months. The trial has already commenced. The petitioner is not involved in any other case. The law with regard to repeated adjournments and its effect upon Article 21 of the Constitution of India has been dealt with in detail by the Hon'ble Supreme Court of India in ***Satender Kumar Antil's*** case (supra). 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, a perusal of the zimni orders as produced by the learned counsel for the petitioner would show that for about 26 times the matter was adjourned by the trial Court out of which for about 18 times the prosecution witnesses were summoned and also throughailable warrants. A surprising factor which is worth mentioning here is that as per the FIR the person (ASI Mohan Singh) who had informed the police party initially was examined in-chief at an earlier stage of the trial and thereafter for the purpose of cross-examination he had to be summoned throughailable warrants for four times and the same thing happened with ASI Sapinder Singh who was the person

who was heading the police party and who became the investigating officer, he was also examined in-chief but for the purpose of cross-examination, he was also required to be summoned throughailable warrants not once but four times. In this way, as of now about 1 year and 2 months have elapsed after the framing of the charges and only one prosecution witness namely ASI Mohan Singh has been fully examined.

On a query being raised during the course of arguments to the learned State counsel as to what was the justification as to why the prosecution witnesses were not deposing and especially after their examination-in-chief, they did not come forward for cross-examination despite the fact that four timesailable warrants were issued against them, she on the basis of instructions received from the police official who is present in the Court, stated that there are no reasons to offer with regard to the same.

Therefore, considering the aforesaid facts and circumstances, especially in view of the long custody of the petitioner and the fact that the petitioner is having clean antecedents and is not involved in any other case, this Court on the basis of conduct of the prosecution witnesses will have no option but to draw an adverse inference against the prosecution only for the purpose of considering the grant of bail to the petitioner.

The afroesaid facts and circumstances would therefore lead this Court to a *prima facie* view to have reasons to believe at least at this stage that the petitioner is 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, 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 facts and circumstances as narrated above, 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

February 23, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No