

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-3671-2024 (O&M)
Date of Decision:13.03.2024

Swaranjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

1.. 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 case bearing FIR No.36 dated 12.02.2023 under Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Civil Lines, District Bathinda.

2. Learned counsel for the petitioner submitted that the petitioner is in custody since 15.02.2023, which is more than 01 year. He further submitted that the trial of the case is not progressing because till now, no prosecution witness has been examined. He further submitted that the charges in the present case were framed on 22.09.2023 and more than 05 months have elapsed but not even a single witness has been examined. He further submitted that four times bailable warrants have been issued against the prosecution witnesses who are none other than the police officials and they have not appeared before the trial Court. He further submitted that the

allegations against the petitioner and other co-accused namely Balwinder Singh are that they were seen by the police party on a motor-cycle having polythene bag and the police party apprehended both the petitioner and the other co-accused and on searching the plastic bag, there was an alleged recovery of 25 bottles of Onerex having weight of 2.5 kilograms of Codeine. He further submitted that the petitioner has clean antecedents and is not involved in any other criminal case and the present case was planted upon the petitioner since the petitioner was allegedly sitting on the motor-cycle and there were no recovery from the conscious possession of the petitioner. He also submitted that so far as the other co-accused namely Balwinder Singh, is concerned, the benefit of regular bail has already been extended to him by a Coordinate Bench of this Court vide Annexure P-3 on the medical ground of his wife and son. He submitted that the petitioner is entitled for grant of regular bail not only on the ground that his co-accused has already been extended the benefit of bail but also on the ground that the petitioner is in custody for more than 01 year and he has clean antecedents and is not involved in any other case.

3. On the other hand, learned State counsel has stated that it is correct that the petitioner is in custody from 15.02.2023, which is more than 01 year. It is also not disputed by learned State counsel that till date not a single witness has been examined and the petitioner has clean antecedents and is not involved in any other case. He further submitted that so far as the parity of petitioner with co-accused namely Balwinder Singh is concerned, the aforesaid co-accused has been extended the benefit of regular bail by a Coordinate Bench of this Court vide Annexure P-3 although on the ground of medical condition of his wife and son. He

further submitted that there was a recovery of 2.5 kilograms of Codiene from the petitioner as well as co-accused and as such the petitioner does not deserve the concession of regular bail.

4. I have heard the learned counsel for the parties.

5. The total custody of the petitioner as per the custody certificate has come out to be more than 01 year. The alleged recovery from the petitioner and other two co-accused was 2.5 kilograms codiene. The other co-accused namely Balwinder Singh has been extended the benefit of regular bail by a Coordinate Bench of this Court vide Annexure P-3 although on the ground of medical difficulties of wife and son of co-accused. However, as per the learned counsel for the parties, the charges in the present case were framed on 22.09.2023 and more than 05 months have elapsed but till today not a single witness has been examined. During the course of arguments, learned counsel for the petitioner has stated that four times bailable warrants have been issued against the prosecution witnesses who are none other than the police officials but no-one appeared before the trial Court. On a query being raised to learned State counsel as to what is the justification with regard to the delay in trial because of the fault of the prosecution witnesses to which he could not offer any explanation. The right of speedy trial has also been acknowledged by the Hon'ble Supreme Court in a number of cases. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]*** observed as under:-

“49.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”.

6. This Court after considering the aforesaid facts and circumstances whereby custody of petitioner is more than 01 year; the other co-accused namely Balwinder Singh has been granted regular by a Coordinated Bench of this Court; after the framing of the charges on 22.09.2023, no prosecution witness has been examined despite issuance of bailable warrants to the prosecution witnesses, this Court is the considered view that in view of the judgement of Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)***, the petitioner also deserves the concession of regular bail since the bar of Section 37 will not apply to him in the light of Article 21 of the Constitution of India.

7. In view of the aforesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.
8. 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

13.03.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No