

208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24669-2023

Decided on:-15.01.2024

Gurpinder Singh @ Navi @ Gurpinderpal Singh

....Petitioner..

vs.

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.G.S. Sandhu, Advocate
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973, prayer has been made for grant of regular bail pending trial, in case bearing FIR No.184, dated 07.09.2022, registered under Sections 22 and 27 of NDPS Act, 1985, at Police Station City Budhlada, District Mansa.

2. In the present case, the petitioner has been implicated for the alleged recovery of 14 vials of cough syrup 'Wincirex' (100 ml each) and 200 tablets of 'Carisoma'.

3. On the other hand, prayer made herein has been opposed at the instance of learned State counsel while referring to the recovery, which is commercial in nature.

4. I have heard learned counsel for the parties and gone through the paper book and find substance in the submissions made on behalf of the petitioner.

5. In the present case, the investigation got concluded on 21.12.2022 with the filing of challan, followed by framing of charges on 23.01.2023 but so far not even a single prosecution witness has been completely examined, except for recording of examination-in-chief of PW-1 ASI Kuldeep Singh and PW2 ASI Jagdev Singh.

A perusal of zimni orders which have been produced before this Court show that on 07 occasions, the prosecution witnesses have failed to appear before the Trial Court, thereby compelling the Court to adjourn the hearing. The petitioner is behind the bars for the last 01 year & 04 months by now and on account of negligent conduct of the prosecution, the Trial has not led any headway. Relevant 07 zimni orders passed by the Judge, Special Court, Mansa are reproduced hereunder:-

(1) CNR No.PBMN010051942022 NDPS-360-2022

State Vs. Gurbinderpal Singh alias Navi

Present: Sh. PS Chahal, Addl. PP for the State.

Accused in custody with defence counsel (produced)

Accused produced before me through Video Conferencing. He be again produced on 20.03.2023 for roohnumai.

No Pw present. Request has been received by ASI Jagdev Singh, ASI Kuldeep Singh and same stands allowed for today only. Remaining unexamined PWs be summoned for 10.04.2023.

*(Mandip Singh Dhillon)
Judge, Special Court,
Mansa/(PB0115)*

Date of order: 27.02.2023

(2) CNR No.PBMN010051942022 NDPS-360-2022

State Vs. Gurbinderpal Singh alias Navi

Present: Sh. PS Chahal, Addl. PP for the State.

Accused in custody with defence counsel (produced through VC)

No PW is present. Adjournment requested. Granted. Now, to come up on 30.05.2023 for prosecution evidence. Remaining PWs be also

summoned for the date fixed. Accused be also produced through Video Conferencing on 01.05.2023 for roohnumai.

Date of Order: 10.04.2023

*(Mandip Singh Dhillon)
Judge, Special Court,
Mansa/PB0115*

(3). CNR No. PBMN010051942022 NDPS/360/2022

State versus Gurbinderpal Singh alias Navi

*Present: Shri Jasvir Singh, Addl.PP for the State.
Accused in custody, represented by Shri Amandeep Singh,
Advocate.*

File received by way of transfer. Accused has been produced from custody through video conferencing No PW is present. In view of written request moved by PW ASI Jagdev Singh, fresh summons to him be issued for 01.09.2023. PW ASI Kuldeep Singh failed to appear despite service on summons. Let he be summoned through bailable warrants in the sum of Rs.5,000/- with one surety in the like amount for the date fixed. Accused be also produced on the date fixed.

Date of Order:04.08.2023

*(Ravi Inder Singh)
Judge, Special Court,
Mansa (U.I.Dno.PB0237)*

(4) CNR No. PBMN010051942022 NDPS/360/2022

State versus Gurbinderpal Singh alias Navi

*Present: Shri Jasvir Singh, Addl.PP for the State. Accused in custody,
represented by Shri Amandeep Singh, Advocate.*

Accused has been produced from custody through video conferencing. No PW is present. Summons issued to PW ASI Jagdev Singh received back unserved. Fresh be again issued for 29.09.2023. PW ASI Kuldeep Singh failed to appear despite service on bailable warrants. He be summoned through non-bailable warrants for the date fixed. Accused be also produced on the date fixed.

Date of Order: 01.09.2023

*(Ravi Inder Singh)
Judge, Special Court,
Mansa (U.I.D No.PB0237)*

(5) CNR No. PBMN010051942022 NDPS/360/2022

State versus Gurbinderpal Singh alias Navi

*Present: Shri B.S. Deol, Addl.PP for the State. Accused in
custody, represented by Shri Amandeep Singh. Advocate.*

Accused has been produced from custody through video conference. No PW is present. PW ASI Jagdev Singh failed to appear despite service on summons. Let he be summoned throughailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 31.10.2023. PW ASI Kuldeep Singh is present and bound down for the date fixed due to evidence in other priority matters. Accused be also produced on the date fixed.

Date of Order: 29.09.2023 (Ravi Inder Singh)
Judge, Special Court,
Mansa (U.I.D No.PB0237)

(6) CNR No. PBMN010051942022 NDPS/360/2022

State versus Gurbinderpal Singh alias Navi

Present: Shri Jasvir Singh, Addl.PP for the State. Accused in custody, represented by Shri Amandeep Singh, Advocate.

Accused has been produced from custody through video conferencing. No PW is present. PW ASI Jagdev Singh failed to appear despite service onailable warrants. His non-ailable warrants be issued for 30.11.2023. Bound PW ASI Kuldeep Singh not appeared. Let he be summoned throughailable warrants in the sum of Rs.5,000/- with one surety in the like amount for the date fixed. Accused be also produced on the date fixed.

Date of Order: 31.10.2023 (Ravi Inder Singh)
Judge, Special Court,
Mansa (U.I.D No. PB0237)

(7). CNR No. PBMN010051942022 NDPS/360/2022

State versus Gurbinderpal Singh alias Navi

Present: Shri Jasvir Singh, Addl.PP for the State. Accused in custody, represented by Shri Amandeep Singh, Advocate.

Accused has been produced from custody through video conference. Bound PW1 ASI Kuldeep Singh and PW2 ASI Jagdev Singh not appeared. Let they be summoned throughailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 20.01.2024. Accused be also produced on 30.12.2023 for roohnumaie.

Date of Order: 14.12.2023 (Ravi Inder Singh)
Judge, Special Court,
Mansa (U.I.D No.PB0237)”

7. In the given facts and circumstances, the conduct of the prosecution needs to be checked. The 07 zimini orders reproduced above show that the prosecution agency is not interested in the Constitutional Right of the petitioner as derived under Article 21/22 of the Constitution of India. Considering the fact that the prosecution appears to be non-interested in the trial and thus, conclusion thereof is likely to take some time, I do not find any reason to extend the incarceration of the petitioner any further.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

9. Keeping in view the fact that on 07 occasions, the prosecution has failed to produce witnesses, it is burdened with a costs of Rs.70,000/-, which shall be recovered from the erring officials from their own pocket and the same shall be released in favour of the petitioner.

10. In addition, the Senior Superintendent of Police, Mansa shall file his own affidavit to explain the delay.

Registry is directed to list the matter on 02.02.2024.

15.01.2024
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(HARKESH MANUJA)
JUDGE

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