

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(226)

**2024:PHHC:000595
CRM-M-63349-2023 (O&M)
Date of Decision: 05.01.2024**

Manpreet Singh @ Manna

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI.

Present:- Mr. R.S. Thind, Advocate for petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI.J (Oral)

The present is a second petition filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioner in case FIR no.21 dated 29.01.2022 registered under section 22 of NDPS Act at Police Station, STF, Phase-4, District SAS Nagar, Mohali.

2. It is submitted by learned counsel for the petitioner that petitioner is in custody from 29.1.2022 which is almost two years. He has submitted that petitioner is not involved in any other case and in the present case police has falsely implicated the petitioner due to political enmity. It is submitted that as per the allegations petitioner was seen by the police party and was carrying a bag on the motorcycle and there has been an alleged recovery of 25000 tablets of Tramadol which falls in the category of commercial quantity but the bar under Section 37 of NDPS Act will not apply in view of the peculiar facts and circumstances of the present case. It is submitted that charges in the present case were framed on 9.8.2022 which is almost 1 year and 5 months but the material witnesses have not been examined till date. It is submitted that one ASI Kulwant and SI Baljeet

Singh who was only the complainant and was not a part of recovery witnesses, have been examined and one Constable has been examined who was only the person who had carried a Ruqa. It is further submitted that SI Som Nath, who had allegedly apprehended the petitioner has only been examined in chief till date.

3. Counsel has further submitted that even the procedure carried out by the police in the present case was totally defective and he referred to Annexures P-4 and P-5 in this regard. He has submitted that when notice under Section 50 of NDPS Act was given to the petitioner the consent of the petitioner was recorded in the same notice. However, two separate documents were prepared. The first document i.e. Annexure P-4 is having heading of Notice under Section 50 of NDPS Act and the second document i.e. Annexure P-5 is having a heading of Consent Memo. However, both the documents are in verbatim the same and both the documents reflect the same subject matter which is violative of provision of Section 50 of the NDPS Act. He submitted that whenever Section 50 of the NDPS Act is invoked, it has to be in consonance with the mandatory provision of the Act and also has to be effective in nature and not superficial. He has submitted that a combined reading of Annexures P-4 and P-5 would show that only an empty formality has been done by making two documents wherein the contents of both the documents are same and only the heading in both the documents is different. It is submitted that in view of the above, even the present recovery from the petitioner gets vitiated. It is submitted that considering the clean antecedents of the petitioner and the long custody of about two years, petitioner may be considered for grant of regular bail.

4. On the other hand, learned State counsel has submitted that the custody of the petitioner is not in dispute and it is also not in dispute that the charges were framed on 9.8.2022 and only the aforesaid witnesses have been examined till date. He further submitted that the petitioner is not involved in any other case. However, since the recovery from the petitioner was of 25000 tablets of Tramadol, the case of the petitioner would be hit by the bar under Section 37 of NDPS Act.

5. I have heard learned counsel for the parties.

6. The total custody period of the petitioner is about two years i.e. w.e.f. 29.1.2022. Charges were framed on 9.8.2022. A perusal of the zimni orders which have been attached by the petitioner as Annexure P-6 would show that repeatedly the matter was adjourned by the learned Trial Court for recording the statements of witnesses. Even bailable warrants had been issued number of times against the material witnesses and even on one such occasion the material witness SI Som Nath did not appear despite the fact that he was bound down. The net result of the same appears to be that due to the fault of the prosecution witnesses by not deposing in time, the petitioner had to face custody for about two years. Even on some dates the petitioner was not produced by the jail authorities and therefore learned Trial Court had to issue production warrants for the production of the petitioner and the matter was adjourned. Apart from the above, a perusal of Annexures P-4 and P-5 would show that two different documents had been prepared by the police which are in verbatim the same and only the headings of these documents were different. Although, it would be a matter of trial and it can only be seen at the time of trial as to what would be the effect of

the aforesaid offer but for the purpose of considering grant of bail to the petitioner, the aforesaid two documents would certainly be relevant documents. A perusal of the aforesaid documents would show that in one go notice had been issued and in the same document the consent of the petitioner has also been recorded but the content of these two documents in verbatim is same and only the heading is different.

7. This Court is of the view that the long custody of the petitioner and the stage of trial are also relevant factors for considering the grant of bail to the petitioner.

8. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another, 2022 (10) SCC 51 (Supra)*** has discussed this issue of repeated adjournments and the scope of Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced 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”.

9. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh, 2023 SCC Online SC 918*** has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

10. Considering the aforesaid facts and circumstances of the case and the fact that petitioner is having clean antecedents and is not involved in any other case and keeping in view the custody period of the petitioner and also the manner in which the prosecution witnesses have been refraining themselves from deposing before the learned Trial Court, this Court is of the view that bar under Section 37 of NDPS Act would not apply in this case in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgements passed by Hon'ble Supreme Court.

11. Consequently, present petition is allowed. 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.

12. 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.

(JASGURPREET SINGH PURI)

JUDGE

05.01.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No