



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

234

CRM-M-3511-2025

Date of decision: March 24th, 2025

Angrej Singh @ Geja

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Shiva Khurmi, Assistant Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

This is a second petition filed by the petitioner seeking the concession of regular bail in FIR No.67 dated 10.05.2023 registered under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), at Police Station Kot Ise Khan, District Moga.

2. The petitioner has approached this Court seeking regular bail on the ground that, despite no fault attributable to him, the trial has remained at a virtual standstill due to the repeated non-appearance of prosecution witnesses. The material on record reveals that the challan was presented on 28.07.2023, and charges were framed on 29.08.2023. However, since then, only one prosecution witness has been examined out of the 15 cited. Disturbingly, all prosecution witnesses in this case are police officials, yet despite repeated issuance of bailable and non-bailable warrants, their presence before the trial Court has not been secured, thereby rendering the entire process a farcical exercise.

3. Learned counsel for the petitioner has rightly contended that the continued incarceration of the petitioner, in these circumstances, amounts to a blatant violation of his fundamental right to a fair and speedy trial under Article 21 of the Constitution of India. It is not the petitioner who is responsible for the stalling of the trial, but the own inability of the prosecution to produce its witnesses. The law does not countenance a situation where an undertrial is left to rot in custody while the prosecution, despite being repeatedly directed to do so, fails to discharge its most elementary obligation-ensuring the presence of its own witnesses.

4. On the other hand, learned State counsel, while opposing the prayer and submissions made by the counsel opposite, has submitted that the petitioner was apprehended based on secret information and that a recovery of 50 intoxicant tablets (Etizolam) weighing 9.6 grams was effected from him. However, learned State counsel, on instructions from ASI Parvinder Singh, has been unable to dispute the fact that the trial has been delayed solely on account of the failure of the prosecution to produce its witnesses. It is further submitted, on instructions, that out of the 15 cited witnesses, only one has been examined while another has been given up.

5. I have heard learned counsel for the parties and perused the record including the zimni orders annexed with the petition, with great concern.

6. The present case is yet another glaring example of how trials under the NDPS Act are being indefinitely delayed due to the habitual failure of prosecution witnesses, who, in most cases, are none other than police officials, to appear before the trial Courts. This Court

is constrained to observe that such lapses are no longer an aberration but have become the norm. Matters have now reached a stage where accused persons, including those booked under stringent provisions of the NDPS Act, are routinely approaching this Court for bail solely on account of the inability of the prosecution to ensure the presence of its witnesses.

7. Repeated assurances are given by learned State counsel that no such complaints regarding the absence of prosecution witnesses in NDPS cases will arise in the future, yet, with alarming regularity, such assurances have proved hollow. If anything, the frequency of such cases has only increased. It is entirely unacceptable that the burden of this indifference should be borne by the accused, who, despite being undertrials are made to endure prolonged incarceration without trial.

8. The right to a fair and the speedy trial is not a theoretical concept. It is a constitutional right. Hon'ble the Supreme Court has time and again emphasized that the prolonged detention of an accused, when the delay is attributable to the prosecution, is an affront to Article 21 of the Constitution of India. Even in cases involving serious allegations, Hon'ble the Apex Court has held that bail cannot be denied merely on the ground of the gravity of the offence when the prosecution itself is responsible for the delay.

9. Furthermore, the menace of drug trafficking is undoubtedly a serious issue, but the responsibility of tackling it rests squarely with the State. The State cannot, on the one hand, demonstrate complete laxity in prosecuting NDPS cases and, on the other, strenuously oppose bail petitions when the delay in trial is solely due to its own failings. If the State is serious about combating drug-related offences, it must

first ensure that it does not itself become the cause for derailment of such prosecutions.

10. In the light of the above, this Court finds no justification to keep the petitioner in continued incarceration when the trial has been stalled solely due to the failure of the prosecution.

11. Accordingly, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12. Before parting, this Court yet again directs the State to take immediate corrective measures to ensure that such complaints regarding the non-appearance of prosecution witnesses in cases under the NDPS Act do not arise in the future.

13. A copy of this order be forwarded to the Director General of Police, Punjab, and the Financial Commissioner (Home), Punjab, who shall ensure that appropriate instructions are issued to all concerned officers, and necessary steps are taken forthwith to prevent any further delays in such trials.

March 24th, 2025

Puneet

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No