



211 CRM-M-11748-2023

**JASPAL SINGH ALIAS NIKKA
V/S
STATE OF PUNJAB**

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Gurminder Singh, Advocate General, Punjab with
Mr. Sandeep, Addl. A.G., Punjab.

1. Through the instant petition, the petitioner seeks the concession of regular bail in case FIR No.82 dated 10.09.2021, under Sections 21(c) and 29 of the N.D.P.S. Act, 1985, registered at Police Station Sarai Amant Khan, District Tarn Taran.

2. A Coordinate Bench of this Court, on 16.05.2023, had passed the hereinafter extracted order:-

“Status report by way of affidavit of Jaspal Singh, PPS, Deputy Superintendent of Police, Sub-Division Tarn Taran, District Tarn Taran, on behalf of respondent-State, is filed in Court today. The same is taken on record.

Learned counsel for the petitioner seeks time to go through the same.

In terms of order dated 15.03.2023, report dated 09.05.2023 from learned Additional District & Sessions Judge, Tarn Taran, through learned District and Sessions Judge, Tarn Taran, has been received. The said report is self explanatory. It is mentioned in the report that accused who is in custody is not being produced by the Superintendent, Central Jail, Goindwal Sahib, despite issuance of production warrants on all dates.

Let explanation in the form of affidavit be called from the Superintendent, Central Jail, Goindwal Sahib, and also from the Senior Superintendent of Police, Tarn Taran, as to why the petitioner who is in custody since 10.09.2021 is not being produced on many dates in the Court and why action be not initiated against them for keeping the accused in custody without any orders passed by the Court concerned. If explanation is not received then concerned officer shall appear in person on that day.

List on 01.08.2023.”

3. In compliance of the order (supra), Gurmeet Singh Chauhan, IPS, Senior Superintendent of Police, Tarn Taran, District Tarn Taran, furnished his

**CRM-M-11748-2023****2**

affidavit dated 28.07.2023, before this Court. In paragraph 4 of the affidavit (supra), it is revealed that the petitioner was not produced before the learned trial Court concerned on a number of occasions, therefore, the learned trial Court concerned could not frame charges against the petitioner.

4. A perusal of the record make revelations that the petitioner was arrested on 10.09.2021 and upon completion of investigation, the Final Report was filed on 07.03.2022. However, due to non production of the petitioner before the learned trial Court concerned, by the jail authorities concerned, the trial did not progress further.

5. The above circumstances depict a serious state of affairs, as the fundamental rights of the petitioner, who is an under-trial prisoner, to have a fair trial, have been infringed, for want of his production before the learned trial Court by the jail authorities concerned.

6. The jail authorities, instead of making any plausible explanation in the compliance affidavit (supra), have attributed the above lacuna on their part, by making a lame excuse qua deficiency of police force on account of engagement in VIP duties on the relevant dates, whereas, this Court in the order (supra), had called for a specific explanation to the query of this Court.

7. Considering the gravity of the matter, this Court had requested the learned Advocate General, Punjab to render assistance to this Court. Accordingly, the learned Advocate General, Punjab, who has caused his appearance, submits at the outset that the submissions made in the compliance affidavit dated 28.07.2023 are inappropriate. Therefore, he seeks leave to withdraw the affidavit (supra) with liberty to file a fresh affidavit, to make compliance of the orders made by this Court on 16.05.2023.

8. The asked for leave is granted to the learned Advocate General, Punjab and he is permitted to file a fresh compliance affidavit, therein making the requisite explanation in respect of the following:-

**CRM-M-11748-2023****3**

(i) reason for non production of petitioner before the learned trial Court concerned, thereby impeding the learned trial Court to frame charges;

(ii) to intimate this Court about the further course of action, as proposed to be adopted by the State of Punjab, to ensure the presence of under-trial prisoners before the trial Courts concerned, in cases involving offences under the NDPS Act, including the present petitioner;

8. Considering the gravity of the matter, it is also deemed imperative to call for an affidavit from the ADGP (Prisons), Punjab, disclosing therein the remedial steps taken by him to ensure the presence of under-trial prisoners before the trial Court concerned, either through physical or virtual mode. The said affidavit be filed on or before the subsequent date of hearing.

9. For the above purpose, list on 22.11.2023.

10. It is made clear that no further adjournment shall be granted, as the present case pertains to infringement of the rights of the petitioner/under-trial prisoner, who is languishing behind the bars, due to his non production before the trial Court concerned.

11. Let a copy of this order be handed over to the learned Advocate General, Punjab, under the signatures of the Bench Secretary of this Court.

October 31, 2023
devinder

(KULDEEP TIWARI)
JUDGE