

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

225

CRM-M-43867 of 2022
Date of Decision:01.12.2022

Sumit Khatri

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Sukhcharan Singh Gill, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is the second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.149 dated 03.10.2020, under Sections 21/61/85 of the NDPS Act, registered at Police Station Maqsudan, District Jalandhar Rural.

The learned senior counsel appearing on behalf of the petitioner has submitted that it is a case where the petitioner is in custody from 03.10.2020, which is more than 2 years, 1 month and 24 days. He submitted that the petitioner is not a habitual offender and is not involved in any other case under the NDPS Act. However, in one case under the provisions of Section 279 IPC stands registered against the present petitioner in the year 2014. He submitted that as per

the FIR, the petitioner alongwith the co-accused namely Parveen Rajput were apprehended alongwith 500 grams of heroin. He submitted that the entire prosecution story was false and the petitioner was falsely implicated in the present case and in fact he was going to Jammu & Kashmir alongwith his friends but a false case was planted upon him. The learned senior counsel further substantiated his arguments by submitting that the charges in the present case were framed 28.09.2021, which is almost one year and two months but till date only one prosecution witness has been examined who was mere formal witness who had only collected the sample from the police Malkhana and sent to the Forensic Science Laboratory, whereas there was a team of 5-6 police personnel including Sub-Inspector, Assistant Sub-Inspector, Head Constable and other officials, who as per the FIR constituted the police party but none of them have stepped into the witness box and deposed despite the fact that more than one year has lapsed after the framing of the charges. He further submitted that 18 adjournments were made by the learned trial Court and the learned senior counsel had attached some of the zimni orders alongwith the present petition and submitted that repeatedly the prosecution witnesses were summoned and on various occasions the learned Special Judge had directed that the prosecution witness be summoned through the SSP and still they did not appear and deposed with the result that the trial has been delayed at the hands of the prosecution itself for no fault of the petitioner. He submitted that there is no justification coming forward as to why the police party who allegedly apprehended the petitioner as per the prosecution story, has chosen not to step into the witness box for more than 1 year and 2 months despite 18 adjournments and repeated summons sent to them which goes to show that on the

face of it the petitioner has been falsely implicated in the present case. Learned counsel has also relied upon a recent judgment of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 AIR (SC) 3386 and contended that right of speedy trial is the fundamental right under Article 21 of the Constitution of India and there should not be any repeated adjournments without any justification, whereas, in the present case without any justification, 18 adjournment were granted and only one witness who was examined was a formal witness. He submitted that since it was a case of false implication due to the aforesaid reason, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that the petitioner has faced incarceration for about 2 years, 1 month and 24 days and the charges were framed on 28.09.2021 but thereafter about 18 adjournment were granted by the learned Special Court, no prosecution witness has been examined except one formal witness, who was only a person who had collected the sample from the police *Malkhana* and sent it to the FSL. He submitted that it is correct that none of the official witnesses who were called as a police party etc. have been examined till date. A specific query being raised to the learned counsel for the State by this Court during the course of arguments as to what is the justification as to why more than one year after the framing of the charges the police party who had rather put the criminal law into motion failed to appear before the Court and depose for 18 dates, he sought instructions from ASI Rajinder Kumar who is present in Court and has stated that no justification is coming forth in this regard. He also submitted that it is correct that the petitioner is

not involved in any other case under the NDPS Act but there is one case under Section 279 IPC pertaining to the year 2014..

I have heard the learned counsel for the parties.

It is a case where allegedly the petitioner alongwith other co-accused were caught with 500 grams of heroin which falls under the category of commercial quantity under the NDPS Act. Therefore, this Court would consider the effect of Section 37 of the NDPS Act in the present case. The learned senior counsel has apprised this Court and also referred to the orders which were passed by the learned Special Court in which it can be seen that the charges were framed on 28.09.2021 and thereafter about 18 adjournments were granted but no prosecution witness has been examined except one formal witness. A perusal of the zimni orders would show that for a number of times Judge, Special Court directed that the prosecution witnesses who are the official witnesses in the present case be summoned through the SSP. Despite the fact that such orders were passed, till date, nobody has come forward for deposition. No justification has come forward from the State counsel as to what prevented them for deposing in Court and with the result that 18 adjournments were granted by the learned Special Court. The arguments raised by the learned senior counsel that the delay has been caused by the prosecution and not by the petitioner which has resulted in his incarceration for about 2 years, 1 month and 24 days without his fault and on this ground he deserves the concession of regular bail carries weight. So far as the arguments raised by the learned senior counsel that he has been falsely implicated in the present case, this Court is of the view that the same get substantiated from the fact that for 18 times no prosecution witness came forward for deposition and

therefore in view of the aforesaid facts and circumstances, this Court is of the *prima facie* view that there are reasons to believe at least at this stage that the petitioner is not guilty of the offence. Apart from the same, so far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be not involved in any other case under the NDPS Act nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid position and also considering the long custody of the petitioner which is more than 2 years, this Court deems it fit and proper to grant the regular bail to the petitioner. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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 present petition.

(JASGURPREET SINGH PURI)
JUDGE

December 01, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No