

CRM-M-48421 of 2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-47812 of 2022 in/and
CRM-M-48421 of 2021 (O&M)
Date of Decision:12.12.2022

Sukhwinder Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. SPS Khaira, Advocate,
for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

CRM-47812 of 2022

For the reasons mentioned in the application, the same is allowed and the copies of the orders passed by the learned trial Court are taken on record as Annexure A-1 (Colly.).

CRM-M-29089 of 2022

For the reasons mentioned in the application, the same is allowed.

CRM-M-48421 of 2021

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.70

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dated 16.06.2021, under Sections 22 & 25 of the NDPS Act, 1985, registered at Police Station Sadar Jagroan, District Ludhiana.

It has been submitted by the learned counsel for the petitioner that it is a case where the petitioner is in custody from 16.06.2021 which is almost 1½ years and after completion of the investigation, the final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court on 15.12.2021 and thereafter the charges in the present case were framed on 18.02.2022 but till date no prosecution witness has been examined.

Learned counsel for the petitioner submitted that it is a case where the petitioner was apprehended by the patrolling party on the suspicion of carrying some intoxicant substance and the allegation was that there was a recovery of 1060 tablets of Tramadol from him which although fall in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the peculiar facts and circumstances. He submitted that the petitioner is not a habitual offender and is not involved in any other case at all.

Giving a factual matrix with regard to how the prosecution case has been conducted, he submitted that the charges in the present case were framed on 18.02.2022 and referred to the subsequent zimni orders passed by the learned Addl. Sessions Judge, Fast Track Court, vide Annexure A-1. On 14.03.2022 no PW was present and the summons issued to the IO namely ASI Surjit Singh were received served but he did not come present despite being served and therefore the learned Court had issuedailable warrants in the sum of Rs.5000/- with one surety in the like amount. Thereafter when the matter was taken up on 05.04.2022 again no prosecution witness was present and summons issued to ASI Jarnail Singh, who

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was a part of the police party, also did not come present and he was summoned through bailable warrants. On 26.04.2022, the prosecution witnesses were served but they did not come present and therefore non-bailable warrants were issued. Thereafter on 20.05.2022 again fresh non-bailable warrants were issued. Thereafter again on 06.07.2022 fresh non-bailable warrants were issued against ASI Jarnail Singh and bailable warrants were issued against ASI Surjit Singh. On 16.08.2022 again no PW was present despite the fact that they were served and therefore the learned Addl. Sessions Judge was constrained to issue non-bailable warrants once again. Ultimately on 20.09.2022 again no PW was present and therefore the learned Court was constrained to issue fresh warrant of arrest against PW ASI Jarnail Singh and bailable warrants of PW ASI Surjit Singh and in this way for a large number of times adjournments were granted by the learned Addl. Sessions Judge for the purpose of securing the presence of the prosecution witnesses but they did not even turn up despite the fact that they were served number of times and bailable, non-bailable and even arrest warrants were issued against the prosecution witnesses who were none other than the persons who were the part of the police party and are the material witnesses as well as the official witnesses who had rather put the criminal law into motion. He submitted that the petitioner has faced incarceration for the last 1½ years only because of the aforesaid conduct of the prosecution and the police party. He submitted that in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case and the petitioner is entitled for the grant of regular bail.

On the other hand, Mr. Jashandeep Singh, learned AAG, Punjab has

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stated that it is correct that the petitioner has faced incarceration for about 1½ years and the charges were framed on 18.02.2022 and thereafter number of times the matter was adjourned and repeatedly bailable and non-bailable warrants were issued and even otherwise arrest warrants were also issued.

So far as the background of the petitioner is concerned, the learned State counsel has stated, on instructions from ASI Gurdeep Singh, that the petitioner is not a habitual offender and is not involved in any other case.

However, during the course of proceedings, on a query being asked to the learned State counsel as to what was the justification as to why for a long period of time, the prosecution witnesses have not been able to step into the witness box for deposing despite the fact that bailable, non-bailable and even arrest warrants were issued, the learned State counsel was not able to justify the same even after taking instructions.

I have heard the learned counsel for the parties.

It is a case where the petitioner has faced incarceration for about 1½ years and he is stated to be not a habitual offender and rather not involved in any other case. The alleged confiscation from him was 1060 tablets of Tramadol which although falls within the category of commercial quantity but the effect of Section 37 of the NDPS Act has to be seen in the light of the peculiar facts and circumstances of the present case. It is rather shocking that the charges in the present case were framed on 18.02.2022, which is almost ten months and for the large number of times repeated adjournments were granted by the learned Addl. Sessions Judge wherein prosecution witnesses have been summoned not only by way of bailable and non-bailable warrants but also by way of arrest warrants of the

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prosecution witnesses who are the official witnesses and who are the police officials. Once the criminal law was set into motion by the police itself then it is a duty of the police officials especially in the NDPS matters to depose before the Court but on large number of times they did not depose despite the fact that they were served and repeated warrants were issued against them.

The Hon'ble Supreme Court of India in latest judgment in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 AIR (SC) 3386 had dealt with this issue of repeated adjournments and it is also settled law that right to speedy trial is a Fundamental Right guaranteed under Article 21 of the Constitution of India. On the face of it, the delay in prosecution has been caused at the hands of the prosecution witnesses and the consequence of the same was that the petitioner had to face incarceration for about 1½ years.

For the purpose of considering the prayer of the petitioner for grant of regular bail in commercial quantity, the effect of Section 37 of the NDPS Act has to be seen in the light of the aforesaid facts and circumstances. The conduct of the prosecution and the police party who had set the criminal law into motion would lead this Court to draw adverse inference against the prosecution. It is actually very surprising that the police officials were summoned by way ofailable warrants, non-ailable warrants and by way of arrest warrants and therefore on the basis of the aforesaid facts and circumstances, this Court has *prima facie* reasons to believe at least at this stage that the petitioner is not guilty of the offence and 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. Furthermore, it is not the case of the State nor it has

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been so argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or he may abscond from justice or influence any witness. 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 facts and circumstances, 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.

Before parting with the judgment, it will not be out of place to note that from the zimni orders, it has been seen that repeatedly bailable, non-bailable and warrants of arrest have been issued against the police officials and therefore it will be just and proper that a copy of the order be sent to the Director General of Police, Punjab for his information.

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. सत्यमेव जयते

(JASGURPREET SINGH PURI)
JUDGE

December 12, 2022

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