

147 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9020-2022 (O&M)
Date of Decision : 01.12.2022

GURPREET SINGH ...Petitioner

Versus

STATE OF HARYANARespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Jatinderpal Singh, Advocate for the petitioner.
Mr. Manish Dadwal, AAG, Haryana.

B.S. Walia, J. (Oral)

[1] Prayer in the second petition under Section 439 Cr.PC is for grant of regular bail to the petitioner during pendency of trial in case FIR No.57 dated 08.03.2020, registered under Sections 22 (c)/61/85, Narcotics Drugs and Psychotropic Substances Act, 1985 at Police Station Kalanwali, District Sirsa.

[2] Brief facts of the case leading to the filing of the instant petition are that on 08.03.2020, the petitioner was arrested from Bus Stand, Pipli with 2500 prohibited intoxicant tablets weighing 1.037 kilogram without any permit or license during patrolling by the police officials. After compliance with the provisions of the NDPS Act, including giving opportunity of personal search before a Gazetted Officer and search having been made thereafter before the Gazetted Officer, the petitioner was arrested and case FIR No.57 dated 08.03.2020 registered under Section 22-C, NDPS Act, 1985 at Police Station Kalanwali, District Sirsa.

No.16904 of 2020, the petitioner, who had been arrested on 08.03.2020, was directed to be released on interim bail till receipt of the FSL report in view of the decision of the Division Bench of this Court in Inderjeet Singh @ Laddi vs. State of Punjab, 2014 (3) RCR (CrI.) 953. Subsequently, on receipt of CFSL report holding the sample to be of contraband and of commercial quantity, the petitioner surrendered before the learned Trial Court on 14.12.2021 and has been in custody thereafter till date. Accordingly, after deducting the period of time during which the petitioner was on interim bail, the total period undergone by the petitioner in custody works out to approximately one year and four months.

[4] Plea on behalf of the petitioner is that in view of discrepancy in the batch number in application u/s 52-A NDPS Act for preparation of inventory and the FIR, contraband allegedly recovered from the petitioner having been mentioned in Clause '9' of the FIR to be Amphetamine and in paragraph 12 of the FIR, to be 5 boxes of Tramadol, besides, despite challan having been presented on 07.10.2021 and charges framed on 14.12.2021, no witnesses were present on the next two dates i.e. 03.02.2022 & 06.04.2022, therefore, the petitioner could not be prejudiced by curtailing his liberty on account of failure of the prosecution to lead evidence. Reliance is placed on the orders of Hon'ble the Supreme Court in Shariful Islam @ Sarif vs. The State of West Bengal in SLP (CrI.) No.4173 of 2022; Nitish Adhikary @ Bapan vs. The State of West Bengal in SLP (CrI.) No.5769 of 2022; Chitta Biswas @ Subhas vs. The State of West Bengal in Criminal Appeal No.245 of 2020 [@SLP (CrI.) No.8823 of 2019]; Dheeren Kumar Jaina vs. Union of India in Criminal Appeal No.965 of 2021 [@ SLP (CrI.) No.4432 of

2021]; Shahjad vs. The State of Uttar Pradesh in SLP (CrI.) No.7840 of 2022; Sayan Ghosh vs. The State of West Bengal in Criminal Appeal No.1668 of 2022 [@SLP (CrI.) No.4282 of 2022]; besides, Karim Adaldar vs. The State of West Bengal in SLP (CrI.) No.8653 of 2022 respectively to contend that the accused therein were released on regular bail pending trial despite recovery being of commercial quantity on account of period of custody undergone for period of 1 year 6 months onwards.

[5] Learned AAG on the other hand contended that the discrepancy in the batch number as also in describing the contraband in the FIR was only on account of inadvertent typographical error but the sample sent for analysis to the CFSL was of the salt Tramadol and the same batch number as mentioned in the FIR. Besides, application for correction of the batch number as mentioned in the order of the learned JMIC, Dabwali dated 09.03.2020 was allowed and correct batch number permitted to be substituted vide order dated 01.04.2021 and same was upheld by the learned trial Court on 22.11.2022 pursuant to the decision of this Court dated 19.07.2022 in CRM-M No.30956 of 2022 whereby the amendment allowed by the learned JMIC on 01.04.2021 had been set aside by this Court and the State granted liberty to take appropriate steps in respect thereto. Learned AAG further contends that no doubt the right to speedy trial is a fundamental right under Article 21 of the Constitution of India but at the same time in view of the commercial quantity of contraband recovered and the bar contained under Section 37, NDPS Act, the petitioner is not entitled to be released on bail on account of non-fulfillment of the conditions specified in Section 37 NDPS Act and at best is entitled to a direction to the learned trial Court to conclude the

trial expeditiously. Learned AAG further contended that the prosecution was not remiss in any manner and had got orders issuing bailable warrants for securing production of the prosecution witnesses for 03.02.2022, 06.04.2022 and 20.05.2022 but could not examine the prosecution witnesses on account of non-service of the bailable warrants on the prosecution witnesses whereas on 30.08.2022 although the prosecution witnesses were present, they could not be examined on account of co-accused of the petitioner having jumped bail and thereafter the matter having been adjourned to 16.12.2022 while in the meantime co-accused who had jumped bail, surrendered on 15.09.2022. Learned AAG further contends that he has sought instructions from the SHO of the concerned Police Station with regard to the period of time within which the prosecution would examine all prosecution witnesses and he has been told that steps would be taken to ensure examination of all prosecution witnesses within three months positively by taking all steps necessary to ensure conduct of a speedy trial and conclusion thereof subject to no dilatory tactic being adopted by the petitioner/accused. Learned AAG while relying upon the decision of Hon'ble the Supreme Court in Satender Kumar Antil vs. Central Bureau of Investigation and another 2022 AIR (SC) 3386, Narcotics Control Bureau vs. Mohit Aggarwal, 2022 (3) RCR (Crl.) 985 and State of Kerala vs. Rajesh Kumar, 2020 (1) RCR (Crl.) 818 contends that in the circumstances, the petitioner at best is entitled to a direction for a speedy trial.

[6] I have considered the submissions of learned counsel. Admittedly, as per Section 37 NDPS Act, no person accused of an offence inter alia involving recovery of commercial quantity, is entitled

to be released on bail or on his own bond unless (i) the public prosecutor

has been given an opportunity to oppose the application for such release and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Aforementioned aspect of the matter has been considered by Hon'ble the Supreme Court in Rajesh Kumar's case. Relevant extract of the said decision is reproduced as under:-

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal

approach in the matter of bail under the NDPS Act is indeed uncalled for.

[7] As per the decision in Mohit Aggarwal's case (Supra), Hon'ble the Supreme Court cancelled bail granted to the accused while reiterating that Section 37, NDPS Act was required to be strictly complied with and that mere length of custody could not be a consideration for grant of bail. Relevant extract of the same is reproduced as under:-

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

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17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in

the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

[8] Learned counsel for the petitioner contended that in Mohit Aggarwal’s case (Supra), bail granted by Hon’ble the High Court was cancelled by Hon’ble the Supreme Court in view of the fact that Hon’ble the High Court had ignored the recovery of commercial quantity of contraband.

[9] Learned AAG contends that the aforesaid argument does not advance the case of the petitioner since in the instant case recovery from the petitioner was also of commercial quantity though not of the magnitude as in the case of Mohit Aggarwal (Supra) and once the recovery is of commercial quantity of contraband then the rigor of Section 37 NDPS Act would apply. Learned AAG further contends that all orders of Hon’ble the Supreme Court relied upon by the learned counsel for the petitioner were passed in the peculiar circumstances of

the case whereas in the instant case, the bar contained under Section 37

of the NDPS Act besides the law as laid down by Hon'ble the Supreme Court in State of Kerala vs. Rajesh Kumar's case (Supra), Satender Kumar Antil (Supra) and Mohit Aggarwal debarred grant of bail.

[10] In Satender Kumar Antil's case (Supra), Hon'ble the Supreme Court took into account different categories/types of offences including "offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212 (6), etc.", and held that the provisions under Section 436(A) CrPC as well as Section 309 CrPC were applicable to Special Acts also in the absence of any specific provision and that the rigor as provided under Section 37 NDPS Act would not come in the way in such a case as the issue pertained to liberty of a person. Hon'ble the Supreme Court was pleased to observe that there was a need to comply with the directions of the Court to expedite the process while ensuring strict compliance with Section 309 CrPC and that while dealing with category 'C' i.e. cases involving accused under the NDPS Act, observed as under :-

"Special Acts (Category C)"

64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses

would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.

Precedents

- *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713:
- xxx
- ***Supreme Court Legal Aid Committee v. Union of India (1994) 6 SCC 731:***

“15. ...In substance the petitioner now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of “personal liberty” must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See Hussainara Khatoon (IV) v. Home Secy., State of Bihar [(1980) 1 SCC 98 : 1980 SCC (Cri) 40], Raghubir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and Kadra Pahadiya v. State of Bihar [(1983) 2 SCC 104 : 1983 SCC (Cri) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the

process of constituting the first two Special Courts started with the issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed, we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569 : 1994 SCC (Cri) 899]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93], release on bail, which can be taken to be embedded in the right of speedy

trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively, he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

- (i) xxx*
- (ii) xxx*

(iii) *Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.*

(iv) xxx

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) xxx. (viii)

Accordingly, in view of the decision in Satender Kumar Antil's case (Supra) the petitioner is not entitled to bail but a direction to a speedy trial while ensuring adherence to the provisions of Section 309 & 436-A, Cr.P.C.

[11] Another aspect of the matter is that although Section 50 NDPS Act was not required to be complied with, yet offer was made and on option being exercised by the petitioner, the search was made in the presence of the Gazetted Officer leading to recovery of the contraband from the polythene bag carried by the petitioner in his right hand. No enmity as such of the police against the petitioner has been alleged to contend false implication. Rather, facts of the case go to show that the present case is one where the petitioner was caught red handed while in possession of commercial quantity of contraband with recovery of the same having been effected in the presence case of a Gazetted Officer i.e. officer other than of the police department appointed by the Deputy Commissioner. Since the recovery of commercial quantity of contraband

was effected from the petitioner in the presence of a Gazetted Officer of a department other than the police department, the same cannot be brushed aside to record a finding that the Court was satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence of which he is accused, nor can any finding be recorded that the petitioner is not likely to commit any offence while on bail. Having said so I am conscious of the sacrosanct right of an accused to a speedy trial in terms of the provisions of Article 21 of the Constitution of India, the provisions of Section 309, 436 A of the Cr.PC as well as the decision of Hon’ble the Supreme Court in Satender Kumar Antil, Rajesh Kumar as well as Mohit Aggarwal’s case.

[12] Accordingly, in view of the position noted above, while dismissing the petition for regular bail, I deem it proper to request the learned trial Court to expedite the conclusion of the trial by examining all prosecution witnesses in any case within three months and to conclude the trial preferably within five months from today.

[13] Needless to mention the aforementioned timeline would be subject to no delay being caused in the conduct of the trial by the accused.

[14] Dismissed with the aforementioned directions.

[15] Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

[16] All the pending misc. applications also stand disposed of.

(B.S. Walia)
Judge

01.12.2022
'Amit'