

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

217

CRM-M-1282 of 2023

Date of Decision:07.08.2023

Gurjinder Singh @ Raju

....Petitioner

Versus

The State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Madan Sandhu, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.50 dated 10.07.2019, under Section 22 of the NDPS Act, registered at Police Station Mattewal, District Amritsar.

2. It has been submitted by learned counsel for the petitioner that it is a case where the petitioner has already faced incarceration for about one year and eight months. He submitted that earlier he was granted interim bail on the ground that the report of the Forensic Science Laboratory was not received and thereafter although he absented from the Court but thereafter he was arrested. He submitted that it is a case where the petitioner has clean antecedents and is not involved in any other case and the alleged recovery in the present case is only 900 tablets of

intoxicant substance which comes to 85.635 grams of Tramadol as per Annexure P-3 and the commercial quantity defined under the NDPS Act is 250 grams.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case and that is the reason as to why the prosecution witnesses are not appearing before the learned trial Court despite the fact that repeatedly summons and also repeatedly bailable warrants were issued against the prosecution witnesses. He further submitted that till date only one prosecution witness has been examined. He also supplied photocopies of the interlocutory orders passed by the learned trial Court during the course of proceedings and while referring to the aforesaid orders, he submitted that the charges in the present case were framed on 03.03.2020 which is 3½ years ago and for a long period of 3½ years after the framing of the charges, only one prosecution witness has been examined till date and for number of times summons and bailable warrants were issued against the prosecution witnesses and there is no justification otherwise as to why the prosecution witnesses are not deposing before the Court. He submitted that in view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that even otherwise also the allegations in the present case were that the police had seen the petitioner while he was walking with a plastic bag and he allegedly threw away the bag and recovery was made not from the petitioner and it was made from the floor and since it was a case of no recovery from the person of the petitioner and the bar contained under Section 37 of the NDPS Act will not apply. He also referred to the judgment of the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 (10) SCC

51, Mohd Muslim @ Hussain versus State (NCT of Delhi) 2023 AIR (SCC) 1648, Rabi Prakash v. The State of Odisha (Special Leave to Appeal (Crl.) No.(s) 4169 of 2023) and Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022) has submitted that considering the long incarceration of the petitioner, he may be considered for the grant of regular bail especially considering his clean antecedents.

4. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not involved in any other case and has clean antecedents. He submitted that the charges in the present case were framed on 03.03.2020 and thereafter only one prosecution witness has been examined till date despite the fact that 3½ years have elapsed after the framing of the charges. He has however opposed the grant of bail to the petitioner on the ground that the alleged recovery of Tramadol is 360 grams which falls in the category of commercial quantity under the NDPS Act and the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He has also supplied the custody certificate in respect of the petitioner which is taken on record.

5. I have heard learned counsel for the parties.

6. It is a case where the petitioner has already faced incarceration for about one year and eight months and earlier he was granted interim bail in view of the fact that the FSL report was not obtained and thereafter he did not come present before the learned trial Court because as per learned counsel for the petitioner he was already on interim bail and thereafter on receipt of FSL report he

was again arrested. The charges in the present case were framed on 03.03.2020 which is about 3½ years ago and as per learned counsel for the parties only one prosecution witness has been examined till date. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case that was the reason as to why the prosecution witnesses are not coming forth for deposition. The reliance upon the aforesaid judgments passed by the Hon'ble Supreme Court is well placed.

7. In view of the facts and circumstances of the present case, the custody of the petitioner would be considered in the light of Article 21 of the Constitution of India. The Hon'ble Supreme Court in **Satender Kumar Antil's** case (supra) has dealt with the issue with regard to the repeated adjournments and its effect upon the Fundamental Rights of the accused. The relevant portion of para 40 of the aforesaid judgment is reproduced as under:-

“40. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision

against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

8. Thereafter, the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain's*** case (supra), the Hon'ble Supreme Court again reiterated that the delayed trial and the long custody is a factor which can be considered for grant of bail given peculiar facts and circumstances of each and every case. The relevant portion of the aforesaid judgment is reproduced as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of

bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 14 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

9. The Hon'ble Supreme Court in **Rabi Prakash's** case (supra) has observed as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

10. In a recent judgment of the Hon'ble Supreme Court in **Dheeraj Kumar Shukla's** case (supra) has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been

framed.”

11. In view of the aforesaid facts and circumstances, this Court is of the view that the petitioner has clean antecedents and is not involved in any other case as per learned counsel for the parties and especially the fact that only one prosecution witness has been examined till date, the petitioner deserves the concession of regular bail in the light of Article 21 of the Constitution of India. The bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the aforeaid peculiar facts and circumstances and also the fact that the recovery was not effected from the person of the petitioner but from the floor even as per the prosecution story.

12. 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.

13. However, anything observed hereinabove shall not be treated as an expresion of opinion on merits of the case and is only meant for the purpose of decision of both these petitions.

(JASGURPREET SINGH PURI)
JUDGE

August 07, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No