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

**CRM-M-1557-2023
Date of Decision: 12.04.2023**

Amarjit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.P.S. Khaira, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.212 dated 20.12.2020, under Section 15, 25, 61, 85 of the N.D.P.S. Act, 1985, registered at Police Station Sadar Khanna, District Ludhiana.

It has been submitted by learned counsel for the petitioner that the petitioner is 75 years of age and is suffering from multiple number of ailments. He further submitted that the petitioner is in custody since 26.12.2020, which is almost 2 years and 4 months. He also submitted that in the present case, the allegations against the petitioner and the other co-accused were that they were travelling in a truck and they were apprehended by the police party along with an alleged recovery of 755 kgs. of *Poppy Husk* which although falls in the category of commercial quantity but the

petitioner has been falsely implicated in the present case and he was not involved in the present case. He further submitted that the charges in the present case were framed by the learned trial Court on 10.03.2022 which is more than 1 year and 1 month ago and till date no prosecution witness has been examined except for one DSP, who has not been fully examined and has been only examined-in-chief. He also submitted that since the petitioner was falsely implicated in the present case, the prosecution witnesses, who are police officials, are deliberately evading the process of the Court and not deposing before the Court at the time of trial. He referred to the zimni orders which have been passed by the learned trial Court after the framing of the charges which have been annexed along with the present petition as Annexure P-4. While referring to the aforesaid zimni orders he submitted that after the framing of the charges till date the matter was adjourned for 13 times by the learned trial Court and the prosecution witnesses were summoned at initial level and twice bailable warrants were issued against the police officials and twice even non-bailable warrants were issued against them and despite issuance of non-bailable warrants, they did not appear before the Court for deposition which would clearly mean that the present case was planted upon the petitioner. He further submitted that considering the long custody of the petitioner which is almost 2 years and 4 months and also considering the judgments of the Hon'ble Supreme Court in this regard, he may be considered for the grant of regular bail even if the petitioner was earlier also involved in one case under the NDPS Act in which he was convicted. He further submitted that rather because of his earlier conviction that the petitioner has now been falsely implicated in the present case.

Learned counsel for the petitioner has referred to two judgments of the Hon'ble Supreme Court. Firstly, "*Satender Kumar Antil Vs. Central Bureau of Investigation and another*", 2022(10) SCC 51 and secondly, the latest judgment of the Hon'ble Supreme Court passed in *Criminal Appeal No.943 of 2023* titled as "*Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*" decided on 28.03.2023 to contend that delay in trial without the fault of the petitioner and non-appearance of the prosecution witnesses without justification can become a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act and also in the light of Article 21 of the Constitution of India.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for almost 2 years and 4 months and after the framing of the charges on 10.03.2022, only one witness i.e. the DSP has been examined-in-chief. She has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner and the co-accused falls under the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

It is not in dispute that the petitioner has faced incarceration for about 2 years and 4 months and the charges were framed on 10.03.2022, thereafter, no witness has been examined except one DSP, who has been examined-in-chief only. It is also not in dispute and is clear from the zimni orders which have been attached along with the present petition that for about 13 times till date, the matter was adjourned by the learned trial Court

and two times bailable warrants were issued against the prosecution witnesses, who are the police officials and two times non-bailable warrants were issued against them and till date only one prosecution witness has been examined-in-chief with the result that the petitioner had to face incarceration for about 2 years and 4 months.

The Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.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.”

Now recently, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the effect of Section 37 of the NDPS Act when there is undue delay in trial. The relevant Paras 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 Malik*¹⁹). 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 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.”

In the facts and circumstances of the present case, it is clear that the trial has been delayed and not only bailable warrants but even non-bailable warrants were issued against the prosecution witnesses. It is a case which falls under the NDPS Act and normally in the NDPS Act, the prosecution witnesses are police officials except when in certain cases there are some independent witnesses or private witnesses.

During the course of arguments, a specific query was raised to the learned DAG, Punjab as to what was the justification for not deposing by the prosecution witnesses before the trial Court for more than 1 year after the framing of the charges and despite issuance of bailable and non-bailable warrants against them to which she sought instructions from S.I. Sukhwinder Singh, who is present in the Court today and could not offer any explanation in this regard.

Therefore, in view of the aforesaid peculiar facts and circumstances of the present case and considering the aforesaid two judgments of the Hon’ble Supreme Court passed in ***Satender Kumar Antil’s case (supra)*** and ***Mohd. Muslim @ Hussain’s case (supra)*** coupled with the fact that the petitioner is an old man of the age of 75 years and according to the learned counsel for the petitioner, the petitioner is suffering from

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multiple ailments, this would also lead this Court to have reasons to believe that at least at this stage only for the purpose of considering the prayer of regular bail that the petitioner is not guilty of offence. Considering the age and custody of the petitioner, he would also be entitled for being considered for grant of regular bail in the light of Article 21 of the Constitution of India.

In view of the above, this Court deems fit and proper to grant regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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.

12.04.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |