

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2551-2023 (O&M)

Date of Decision: 13.04.2023

Gurpiar Singh @ Sonu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. K.S. Sidhu, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a fifth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 0159 dated 13.11.2019, under Sections 22/61/85 of NDPS Act, registered at Police Station Bhawala, District Fazilka.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 13.11.2019 which is almost 3 years and 5 months. He submitted that it is a case where on the basis of information from some private persons that the police party allegedly had come on a private vehicle and apprehended the petitioner by making false allegations pertaining to recovery of 3500 tablets of Tramadol Hydrochloride from the petitioner. He submitted that in fact the petitioner has been falsely implicated in the present case because of political enmity and the fact that earlier he was involved in one case under the NDPS Act which involved only 8 kg. of poppy husk.

Learned counsel further submitted that the charges in the present case were framed on 16.03.2020 which is more than three years and till date only three witnesses have been examined who were in fact compelled by the learned trial Court repeatedly by issuance of summons, bailable warrants and non-bailable warrants and now only three witnesses have been examined for the last three years after the framing of the charges. He submitted that there is a delay in the trial not because of the fault of the petitioner but purely because of the fault of the prosecution witnesses who have falsely implicated the present petitioner and with the result of the same the petitioner had to face long custody of about 3 ½ years. He referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]* to contend that such kind of delayed adjournments have adverse effect upon the Fundamental Rights of an accused under Article 21 of the Constitution of India. He further referred to a latest judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [Criminal Appeal No.943 of 2023]* to contend that in certain circumstances where delay has been caused in a trial, then even the stringent provision of Section 37 of the NDPS Act gets diluted and a prayer for bail can be considered on the ground of long custody in a given facts and circumstances of any case.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody from 13.11.2019 which is almost 3 years and 5 months and the charges were framed on 16.03.2020 which is more than 3 years and now only three witnesses have been examined. She submitted that it is also correct that the petitioner is not involved in any other case except for one case under the NDPS Act where the

alleged quantity was 8 kg. of poppy husk. She has opposed the grant of regular bail to the petitioner on the ground that 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.

The petitioner has already faced incarceration for 3 years and 5 months. The charges were framed on 16.03.2020 and only three witnesses have been examined till date. On 15.03.2023, this Court had called for report from the concerned trial Court for filing a status report. The same has been received from the learned trial Court. A perusal of the same would show that for a number of timesailable and non-ailable warrants were issued to the prosecution witnesses who are the police officials and who have set the criminal law into motion themselves and they did not care to depose before the learned trial Court despite the fact that for more than three years charges have been framed and the learned trial Court was compelled to issue warrants against them. Not only this, some of those witnesses were even earlier examined-in-chief but for the cross-examination, they did not come and again the trial Court had to adopt the process for calling them. During the course of arguments, a query was raised to the learned State counsel as to what was the justification for not deposing before the Court despite repeated adjournments and as to whether it was not the duty of the police officials to have themselves depose before the Court, she was not able to justify the same. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of Article 21 of the Constitution of India. 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”.

Recently also the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.19 and 20 are produced 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). 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 present facts and circumstances more than three years have elapsed after the framing of the charges but only three witnesses have been examined that also when the trial Court compelled them to come before the Court and depose. The petitioner is not at fault for the delay of the trial. The net result of the same was that the petitioner had to face incarceration for 3 years and 5 months and still the trial of the case may take long time, therefore, in the light of the aforesaid facts and circumstances, this Court has reasons to believe at least at this stage and only for the purpose of considering the prayer of the petitioner for the grant of regular bail that in view of the conduct of the police officials for not deposing before the trial Court, there are reasonable grounds to believe *prima facie* that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the State

counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore this Court is of the view that both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act stand satisfied.

In view of the above and considering the long custody of the petitioner which is 3 years and 5 months and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to grant 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, 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 meant for the purpose of deciding the present petition only.

13.04.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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