

CRM-M-2777-2023 (O&M) and
CRM-M-18783-2023 (O&M)

2023:PHHC:108672

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2777-2023 (O&M)
Date of Decision: 21.08.2023

(I)
Kayam Khan @ Quem Khan

....Petitioner(s)

Versus

Union of India

.....Respondent(s)

CRM-M-18783-2023 (O&M)

(II)
Sanjeev Kumar

....Petitioner(s)

Versus

Union of India

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arjunveer Sharma, Advocate,
for the petitioner in CRM-M-2777-2023.

Mr. Raj Kumar Gupta, Advocate,
for the petitioner in CRM-M-18782-2023.

Ms. Puneeta Sethi, Senior Panel Counsel,
for the respondent-Union of India.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same complaint filed by the NCB and the prayer in both the cases

is for the grant of regular bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners in case NCB Crime No.22 dated 06.05.2019, under Sections 8, 20, 29 & 60 of NDPS Act, registered at Narcotics Control Bureau, Zonal Unit, Chandigarh.

3. CRM-M-2777-2023 has been filed by the petitioner Kayum Khan @ Quem Khan and CRM-M-18783-2023 has been filed by the petitioner Sanjeev Kumar.

4. Mr. Arjun Veer Sharma, Advocate appearing on behalf of the petitioner Kayum Khan @ Quem Khan submitted he is in custody for 4 years, 3 months and 16 days and Mr. Raj Kumar Gupta, Advocate appearing on behalf of the petitioner Sanjeev Kumar submitted that he is in custody for 3 years, 9 months and 19 days and he was nominated later on during the course of investigation.

5. Both the learned counsel for the petitioners have submitted the charges in the present case were framed on 16.07.2021 and more than 2 years have elapsed but only two witnesses have been examined in full and two have been partly examined. They further submitted that the delay in the trial has occurred at the instance of the prosecution and for 2 years they did not care to depose before the Court and with the result that the petitioner Kayum Khan @ Quem Khan has to face incarceration for 4 years, 3 months and 16 days and the petitioner Sanjeev Kumar had to face incarceration for 3 years, 9 months and 19 days. They further submitted that so far as the petitioner Kayum Khan @ Quem Khan is concerned, he is not

involved in any other case under the NDPS Act and so far as the petitioner Sanjeev Kumar is concerned, he is involved in three more cases under the NDPS Act but the learned counsel for the petitioner submitted that it was only because of this reason that during the investigation he has been falsely implicated and so far as the petitioner Sanjeev Kumar is concerned, earlier the prosecution story was that the recovery of 16.470 kgs. Charas was proposed to be supplied to one another person Kabira but later on instead of Kabira, the name of the petitioner has been substituted.

6. Both the learned counsel have also 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]*** and contended that when there is long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. They also referred to another judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]*** wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed by taking a serious view with regard to delay in trial and long custody. They also referred to another judgment of Supreme Court in ***Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)*** and also a recent judgment of the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*** to contend that long custody itself is a ground for grant of bail notwithstanding the bar

contained under Section 37 of the NDPS Act.

7. On the other hand, Ms. Puneeta Sethi, Senior Panel Counsel appearing on behalf of the NCB has submitted that so far as the custody period of the petitioners is concerned, the same is not in dispute. She submitted that however three witnesses have been examined in full and two witnesses have been examined in part. She has however opposed the grant of regular bail to the petitioners on the ground that the recovered quantity falls in the category of commercial quantity and therefore the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act. She also submitted that so far as the petitioner Sanjeev Kumar is concerned, it was not a case of substitution of Sanjeev Kumar with Kabira but Kabira and Sanjeev Kumar is one and the same person known by two names.

8. I have heard the learned counsel for the parties.

9. It is a case where the petitioner Kayum Khan @ Quem Khan is in custody for 4 years, 3 months and 16 days and petitioner Sanjeev Kumar is in custody for 3 years, 9 months and 19 days which is not disputed. The petitioner Kayum Khan @ Quem Khan is stated to be not involved in any other case under the NDPS Act but he is involved in one case under IPC. So far as the petitioner Sanjeev Kumar is concerned, he is stated to be involved in three more cases under the NDPS Act. However, this Court is of the view that considering the facts and circumstances of the present case and also considering the long custody of both the petitioners and the stage of trial, the objections taken by the learned counsel for the NCB with regard to Section 37 of the NDPS Act would not sustain. 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”.

10. 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.

11. 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.”

12. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (Supra)*** has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced 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.

13. After considering the arguments raised by the learned counsel for the parties, this Court is of the view that the long custody of both the petitioners and considering the stage of the trial wherein only three witnesses have been examined in full and two witnesses have been examined partly despite the fact that the charges were framed more than two years ago, this Court is of the view that the long custody of both the petitioners itself would constitute a good ground for the grant of regular bail and the bar contained under Section

37 of the NDPS Act will not apply to both the petitioners

14. Consequently, both the petitions are allowed. Both the petitioners 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.

15. 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 petitions only.

21.08.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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