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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3947-2022(O&M)
Date of Decision: 17.10.2023

Rajinder Singh @ Titu

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ankur Jain, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.199 dated 10.08.2021, under Section 21(C) of NDPS Act, registered at Police Station City Tarn Taran, District Tarn Taran.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 2 years and 2 months and in the present case, the allegations were that the petitioner was caught alongwith 362 grams of heroin. He submitted that in fact the petitioner was falsely implicated in the present case in view of the fact that earlier he was involved in three more cases under the NDPS Act out of which in one case, he has already been acquitted. In other case he was convicted although the recovery in that case was only 5 grams of heroin and in one more case, he is an undertrial. He submitted that be that as it may the charges in the present case were framed

by the learned trial Court on 28.07.2022 which is about 1 year and 2 ½ months and till date no prosecution witness has been examined despite the fact that the matter was repeatedly adjourned by the learned Judge, Special Court. He also referred to two orders passed by the learned trial Court dated 19.09.2023 and 06.10.2023 wherein it has been so observed by the learned trial Court that the bailable warrants have been issued against the prosecution witnesses who are police officials, one of them is the Sub Inspector and another is Assistant Sub Inspector who were served but still they did not appear despite bailable warrants and thereafter again bailable warrants were issued. He submitted that since it was a case of false implication, the prosecution witnesses who are the police officials are not appearing before the learned trial Court and till date not even a single prosecution witness has been examined despite the fact that the charges were framed about 1 year and 2 ½ months ago. He further submitted that there is another reason to substantiate his arguments that he has been falsely implicated that the I.O of the present case namely, ASI Harpal Singh was dismissed from service in some other case on the ground that he had planted 15 kg. of opium on the accused of that case and FIR against him is Annexure P-2.

3. Learned counsel further 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 a 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. He 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 long trial. He referred to another judgment of Supreme Court in *Dheeraj Kumar Shukla v. The State of Uttar Pradesh, 2023 SCC Online SC 918* and also a recent judgment of 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.

4. On the other hand, Mr. Ramdeep Partap Singh, Senior 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 till date no prosecution witness has been examined. He has however opposed the grant of regular bail to the petitioners on the ground that the confiscated 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. He further submitted that the petitioner is involved in three more cases out of which although he has been acquitted in one case as per the affidavit filed by the State.

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

6. It is a case where the petitioner has already faced incarceration for 2 years and 2 months and the charges in the present case were framed on 28.07.2022. As per the learned counsel for the parties, not even a single prosecution witness has been examined till date despite the fact that about 1 year and 2 ½ months have elapsed after the framing of the charges. Learned counsel for the petitioner during the course of arguments has referred

photostat copies of the orders passed by the learned trial Judge dated

19.09.2023 and 06.10.2023 which shows that the police officials who are the prosecution witnesses were served on the basis ofailable warrants issued to them and still they did not appear and therefore againailable warrants were issued against them. During the course of arguments a specific query was raised to the learned State counsel as to what was the justification as to why these prosecution witnesses did not care to depose before the trial Court to which he could not offer any justification with regard to the same.

7. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue.

Para 49 of the aforesaid judgment is reproduced as under:-

“49. 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. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. The relevant portion of the aforesaid judgment contained in para No.19 and 20 are 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). 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.

9. 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.”

10. 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.

11. After hearing the learned counsel for the parties, this Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner and the stage of the trial whereby more than 1 year and 2 ½ months have elapsed after the framing of the charges but no prosecution witness has been examined, the bar contained under Section 37 of the NDPS Act will not apply to the

petitioner in the light of Article 21 of the Constitution of India.

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, if not required in any other case.

13. 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.

17.10.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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