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

CRM-M-4800-2023

Date of Decision: 27.07.2023

Thomas

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. 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.269 dated 06.09.2021, under Sections 21 & 29 of the NDPS Act, 1985, registered at Police Station City Ferozepur, District Ferozepur.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 1 year and 7 months and the charges in the present case were framed by the learned trial Court on 27.05.2022 which is 1 year and 2 months ago, but till date not even a single prosecution witness has been examined. He further submitted that as per the allegations, there was a recovery of 40 grams of *Heroin* from the other co-accused, namely, Gora @ Gurpreet Singh which does not fall in the category of commercial quantity under the NDPS Act but thereafter, there was another recovery of 1

kg. & 360 grams of *Heroin* from a rented accommodation which was owned by one of the other co-accused, namely, Rajesh Kumar, apart from the above, there was one more recovery of 50 grams of *Heroin* from another co-accused, namely, Maura @ Moura. He further submitted that no recovery was effected from the petitioner at all in the present case and his name was nominated thereafter under Section 29 of the NDPS Act since the other co-accused had disclosed that the contraband was supplied by the petitioner. He also submitted that the aforesaid co-accused, namely, Gora @ Gurpreet Singh has already been extended the benefit of regular bail by this Court on 21.04.2023 in CRM-M-14600-2023 and even the other co-accused, namely, Maura @ Moura has also been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-58699-2022 on 14.03.2023 and so far as the present petitioner is concerned, he is not only at parity with the aforesaid two co-accused but he is rather at better footing because no recovery has been effected from the petitioner.

3. Learned counsel for the petitioner laid much emphasis on the fact that 1 year and 2 months have elapsed after the framing of charges, not even a single witness has been examined by the trial Court and has, therefore, referred to a judgment of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)", 2023 AIR(SC) 1648, *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "Rabi Prakash Vs. The State of Odisha" and *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" and contended that in view of the aforesaid

factual position as well as the judgments passed by the Hon'ble Supreme Court, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner and particularly in view of the fact that no recovery has been effected from the present petitioner.

4. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has stated that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that after the framing of the charges, no witness has been examined and the other co-accused, namely, Maura @ Moura and Gora @ Gurpreet Singh have been granted benefit of regular bail by this Court. He has however submitted that it is a case where the co-accused had disclosed that the *Heroin* was supplied by the petitioner and the petitioner is a habitual offender and is involved in two more cases under the NDPS Act and therefore, does not deserve the concession of regular bail.

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

6. The present is a case where the petitioner has faced incarceration for more than 1 year and 7 months. The objection raised by the learned State Counsel can be balanced on the basis of the facts and circumstances of the present case. The charges were framed on 27.05.2022, which is 1 year and 2 months ago but till date no prosecution witness has been examined.

7. During the course of arguments, a specific query was raised to the learned State counsel as to what is the justification as to why the prosecution witnesses who are the police officers did not depose before the Court despite the fact that more than one year has elapsed, the charges have been framed to which he could not offer any explanation.

8. 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.”

9. Now recently, Hon'ble Supreme Court in **Mohd. Muslim @**

Hussain's case (supra) also discussed the issue with regard to delay in trial and long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. 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 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

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.”

10. Further recently, the Hon’ble Supreme Court in ***Rabi Prakash’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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. Similarly, the Hon’ble Supreme Court in ***Dheeraj Kumar Shukla’s case (supra)*** has opined 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. In the present case, no recovery was effected from the petitioner and the allegations against the petitioner were that he had supplied the *Heroin* to the other co-accused and the recovery was made from the other co-accused does not fall in the category of commercial quantity under the NDPS Act.

13. The fact that the petitioner is involved in two more cases, therefore, would not disentitle the petitioner for grant of regular bail considering the peculiar facts and circumstances of the present case. Apart from the above, the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the aforesaid facts and circumstances and also in view of the fact that it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may influence the witness or may tamper with the evidence. Furthermore no explanation has come forth from learned State Counsel as to why after framing of charges about one year and two months not even a single witness has been examined.

14. Therefore, considering the aforesaid totality of circumstances of the present case and also considering the custody of the petitioner, this Court, therefore, deems it fit and proper to grant regular bail to the petitioner, especially in the light of Article 21 of the Constitution of India. 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.

15. 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.

27.07.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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