

CRM-M-8041-2022 (O&M);
CRM-M-44197-2022 (O&M) and
CRM-M-247-2023 (O&M)

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2023:PHHC:083114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8041-2022 (O&M)
Date of Decision: 03.07.2023

(I)
Jiwan Kumar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-44197-2022 (O&M)

(II)
Raj Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-247-2023 (O&M)

(III)
Kuldeep Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. K.S. Brar, Advocate,
for the petitioner in CRM-M-8041-2022.

Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner in CRM-M-44197-2022.

Mr. Hitesh Verma, Advocate,

for the petitioner in CRM-M-247-2023.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. All the three petitions are taken up together for final disposal with the consent of learned counsel for the parties since all the three petitions arise out of the same FIR and the prayer in all the three cases is for the grant of regular bail.

2. All the three petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 55 dated 01.06.2021, under Sections 15 (c)/61/85 of NDPS Act, registered at Police Station City Rampura, District Bathinda.

3. CRM-M-8041-2022 is a second petition whereas CRM-M-44197-2022 is a third petition and CRM-M-247-2023 is also a third petition and as per the learned counsels for the petitioners all the earlier petitions were dismissed as withdrawn.

4. All the learned counsels for the petitioners appearing in all the three cases have stated that it is a case where the petitioners have been falsely implicated whereby as per the FIR the police party had raided a stationary truck from where there was an alleged recovery of 100 kgs. of poppy husk and all the three petitioners were arrested. They submitted that all the three petitioners are facing incarceration for 2 years and 26 days. One of the petitioners namely Jiwan Kumar was granted interim bail by this Court on medical grounds for four weeks and thereafter he has surrendered. They further submitted that all the three petitioners are having

clean antecedents and they are not involved in any other case except for one petitioner i.e. Raj Singh who is involved in one case under Section 138 of the Negotiable Instruments Act, 1881. They further submitted that it is a case where the learned trial Court framed the charges on 14.07.2022 and almost one year has elapsed but the trial has not progressed and only one witness has been examined, namely, Constable Paramjeet Singh who had only carried the sample from one office to another office. They further submitted that the material witnesses in the present case were essentially the police party who had allegedly confiscated the contraband and had falsely implicated the present petitioners but despite 14 adjournments granted by the learned trial Court, they did not choose to appear before the trial Court and for that there is no justification at all. The learned counsels also supplied photostat copies of the zimni orders passed by the learned trial Court after the framing of the charges on 14.07.2022. The aforesaid zimni orders are hereby taken on record as Mark-X. While referring to the aforesaid orders, they submitted that at the initial stages the learned trial Court even issued bailable warrants against one of the witnesses, who, did not choose to appear even after issuance of bailable warrants for a number of times and thereafter he was examined. They further submitted that considering the fact that the petitioners are having clean antecedents and are not involved in any other case except as aforesaid, the petitioners have faced incarceration for 2 years and 26 days and 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 also a latest judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain***

Versus State (NCT of Delhi) [2023 AIR (SC) 1648] and contended that it is a clear cut case where there is a deprivation of Right to Life guaranteed under Article 21 of the Constitution of India because of the conduct of the police officials who did not choose to appear before the learned trial Court.

5. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that so far as the custody period of the petitioners is concerned, the same is correct and it is also correct that the petitioners are not involved in any other case except for one petitioner who is involved in one case under Section 138 of the Negotiable Instruments Act, 1881. 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 also submitted that the Investigating Agency have sufficient evidence to show that the petitioners were involved in the aforesaid offence.

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

7. It is a case where all the three petitioners have faced incarceration for more than 2 years. They are stated to be not involved in any other case except for one petitioner i.e. Raj Singh who is involved in one case under Section 138 of the Negotiable Instruments Act, 1881. The charges in the present case were framed on 14.07.2022. A perusal of the zimni orders which have been filed in the Court today would show that after the framing of the charges, the learned trial Court adjourned the case for about 14 times repeatedly for summoning of the prosecution witnesses and even at the initial stages bailable warrants were issued against Constable

Paramjeet Singh, who according to the learned counsel for the parties, was a person who had only carried the sample from one office to another office but none of the person who allegedly raided and confiscated choose to appear before the learned trial Court for one year and despite 14 adjournments. In a criminal prosecution especially when the matter relates to the NDPS Act normally the prosecution witnesses are the police officials except when some of the private witnesses are to be examined. It is the police officials who had put the criminal law into motion and it becomes the duty of the police officials who are the prosecution witnesses to depose before the trial Court. 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 after seeking instructions from SI Sukhpal, he was not able to justify the same.

8. 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”.

9. 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 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.

10. After hearing the learned counsels for the parties, this Court is of the considered view that it is a fit case for grant of regular bail to the petitioners and considering the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners.

11. In view of the above, all the three petitions are allowed. All the three petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

12. 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.

03.07.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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