

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8054-2023 (O&M)

Date of Decision: 03.07.2023

Ravinder Kumar @ Rawinder Kumar @ Sonu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vipin Mahajan, Advocate, for the petitioner.

Mr. Rajiv Verma, 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 FIR No. 157 dated 23.08.2021, under Sections 22, 22(b), 29 of NDPS Act, registered at Police Station City Gurdaspur, District Gurdaspur, Punjab.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for about 18 months and the petitioner is having clean antecedents and he is not involved in any other case. He submitted that in the present case the allegation against the petitioner was with regard to alleged recovery of 15 grams of Etizolam which although falls in the category of commercial quantity under the NDPS Act but in the facts and circumstances of the present case the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially considering the long custody of the petitioner and his antecedents. He further submitted that the learned trial Court

framed the charges in the present case on 15.02.2022 and about 1 year and 5 months have elapsed but not even a single witness has been examined. During the course of arguments the learned counsel for the petitioner also supplied the photostat copies of the interlocutory orders passed by the learned trial Judge. The photostat copies of the aforesaid interlocutory orders are taken on record as Mark-X. While referring to the aforesaid orders, he submitted that after the framing of the charges the trial Court adjourned the case for about 18 times. Although for some time the learned Presiding Officer was not holding Court because he was under suspension but the fact remains that right from the beginning the prosecution witnesses were being summoned. He further referred to order dated 11.07.2022 passed by learned trial Court whereby one PW namely Ashwani Kumar was served but thereafter he did not come present despite the fact that he was summoned and on 27.09.2022 he was bound down for the next date and all the remaining witnesses were also summoned but thereafter even till date no prosecution witness has been examined. He further submitted that it is a case where the petitioner has been falsely implicated and that is the reason as to why the prosecution witnesses are not appearing to depose before the learned trial Court for about 1 ½ years after the framing of the charges.

3. Learned counsel has 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 in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648] to contend that when the trial Court adjourns the cases from time to time then it affects the rights of the accused persons and the present petitioner has faced long incarceration of 1 ½ years for no fault of his and there is no justification as to

why the prosecution witnesses did not care to appear despite the fact that some of them were served at initial stages. He further submitted that even on many dates the petitioner was not produced before the learned trial Court.

4. The learned counsel also submitted that even otherwise also there was a violation of Section 50 of the NDPS Act and has also referred to consent memo Annexure P-2 to contend that the offer which was given was a defective offer since the petitioner was not apprised of his right of being searched in the presence of a Magistrate or a Gazetted Officer but he was only offered to be searched from a Magistrate or a Gazetted Officer. He referred to a judgment of the Hon'ble Supreme Court in *Nirmal Singh Pehlwan @ Nimma Versus Inspector, Customs, Customs House, Punjab, 2012(1) SCC (Cri.) 555* in support of his contentions.

5. On the other hand, Mr. Rajiv Verma, learned DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is not in dispute and it is also correct that the petitioner is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the recovery from the petitioner was 15 grams of Etizolam which falls in the category of commercial quantity and therefore the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act since the prescribed quantity is 2.5 grams under the schedule of the NDPS Act.

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

7. The petitioner has already faced incarceration for about 1 ½ years. The charges were framed on 15.02.2022 which is almost 1 year and 5 months but no prosecution witness has been examined till date. The matter was adjourned by the learned trial Court for about 18 times. Some of the

prosecution witnesses were served at initial stages but they also did not care to depose before the learned 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 the prosecution witnesses did not care to depose before the trial Court to which after seeking instructions from ASI Nirmal Singh, he could not justify the same. The petitioner is stated to be having clean antecedents and not involved in any other case. 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”.

8. 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.

9. In the facts and circumstances of the present case no justification

has come forth as to why after about 1 ½ years after the framing of the charges that no prosecution witness has been examined till date. The petitioner is not at fault for the delay of the trial. The petitioner having clean antecedents had to face incarceration for 1 ½ years due to delay on the part of the prosecution. Therefore after considering the totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner especially in the light of Article 21 of the Constitution of India. In the facts and circumstances of the present case and in view of the judgments in *Satender Kumar Antil (Supra) and Mohd. Muslim @ Hussain (Supra)*, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

10. 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.

11. 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.

03.07.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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