

218
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8424-2023 (O&M)
Date of Decision: 04.07.2023

Raju Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Karan Kalra, Advocate for
Mr. Sandeep Verma, 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. 100 dated 18.06.2021, under Section 15(c) of NDPS Act, registered at Police Station Sangat, District Bathinda.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 18.06.2021 which is more than 2 years. He submitted that in the present case there was an alleged recovery of 80 kgs. of poppy husk from the petitioner and the other co-accused. He submitted that the aforesaid other co-accused has been granted regular bail by a Coordinate Bench of this Court in CRM-M-3553-2023 on 07.02.2023 and one of the other co-accused namely Guddu Singh has been granted anticipatory bail by this Court. He submitted that the petitioner has been falsely implicated in the

present case which can be substantiated from the fact that charges in the present case were framed on 27.07.2022 and almost one year has elapsed but no prosecution witness has been examined. He submitted that the reason as to why the prosecution witnesses are not stepping into witness box is that the petitioner was falsely implicated. 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] in this regard. He further submitted that the petitioner is having clean antecedents and he is not involved in any other case and in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

3. 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 prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act..

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

5. The petitioner has already faced incarceration for more than 2 years. The charges were framed on 27.07.2022 which is almost 1 year but no prosecution witness has been examined till date, as per the learned counsel for the parties. During the course of arguments a specific query was raised to the learned State counsel as to what was the justification as to why for long one year, after the framing of the charges, no prosecution witness has been examined to which after seeking instructions from ASI Gursewak Singh, he

could not justify the same. Hon'ble Supreme Court in ***Satender Kumar Antil (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”.

6. 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 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 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.*

7. After perusing the record and after hearing the learned counsel for the parties, this Court is of the view that in the light of Article 21 of the Constitution of India and also in view of the aforesaid two judgments of the Hon'ble Supreme Court in ***Satender Kumar Antil (Supra) and Mohd. Muslim @ Hussain (Supra)*** and also considering the fact that the petitioner is having clean antecedents, the petitioner is entitled for the grant of regular bail. The other co-accused namely Kalu Lal who is at parity with the petitioner has

already been extended the benefit of regular bail by a Co-ordinate Bench of this

Court.

8. In view of the above, this Court is also of the considered view that the bar contained under Section 37 of the NDPS Act will not apply in the present case.

9. 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.

10. 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.

04.07.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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