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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M No.9642 of 2023 (O&M)****Date of Decision: 21.07.2023**

Kashmir Singh @ Sheera

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikas Gupta, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

1. The present is the second petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.225 dated 30.08.2019, under Sections 22, 29, 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Tarn Taran, District Tarn Taran.

2. It has been submitted by learned counsel for the petitioner that he has been in custody for 03 years and 07 months and there is alleged recovery of 7000 tablets of Tramadol from the petitioner and 4500 tablets of Tramadol from the co-accused. He has submitted that the aforesaid co-accused namely Jasbir Singh has already been extended the benefit of regular bail by a Coordinate Bench of this Court in CRM-M No.20131 of 2022 vide order dated 09.02.2023 especially on the ground of long custody. He submitted that the petitioner is exactly at parity with the co-accused and therefore, he is entitled for the grant of regular bail.

3. Learned counsel for the petitioner also submitted that in the present case the charges were framed on 08.01.2021 which is almost of two and a half years ago and till date only one Prosecution Witness (PW) has been examined and submitted that because of the fault of the prosecution, the petitioner had to face incarceration of 03 years and 07 months and only one Prosecution Witness has been examined till date. He further submitted that the other co-accused namely, Jasbir Singh has also been granted regular bail on the basis of long custody and the bar contained under Section 37 of the NDPS Act will therefore not apply in the present case. In support of this, he referred to the judgment of Hon'ble Supreme Court in "**Satender Kumar Antil Vs. Central Bureau of Investigation**", (2021) 10 SCC 773 with regard to repeated adjournments in the light of Article 21 of the Constitution of India. He has also referred to the judgment of Hon'ble Supreme Court in "**Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**" [2023 AIR (SC) 1648] wherein the Apex Court has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. Learned counsel for the petitioner has further referred to the latest judgment of Hon'ble Supreme Court in "**Rabi Prakash Vs. State of Odisha**" Special Leave to Appeal (Crl.) No(s).4169 of 2023, with regard to the issue of prolonged incarceration. He has also referred to the judgment of Hon'ble Apex Court in "**Dheeraj Kumar Shukla Vs. State of UP**" Special Leave to Appeal (Crl.) No.6690 of 2022 in order to support his contentions.

4. On the other hand, learned State counsel has stated that it is correct that the petitioner is in custody for 03 years and 07 months. He further stated that it is also correct that he is not involved in any other case and other co-accused

namely, Jasbir Singh has already been extended the benefit of regular bail and the petitioner is also at parity with the co-accused.

5. I have heard learned counsel for the parties.

6. This Court would consider the long custody of the petitioner which is 03 years 07 months and the fact that two and a half years have gone by after the framing of the charges and only one witness has been examined. The petitioner is stated to be at parity with the other co-accused namely, Jasbir Singh who has been granted regular bail by a Coordinate Bench of this Court.

7. The Hon'ble Supreme Court in ***"Satender Kumar Antil Vs. Central Bureau of Investigation"***, (2021) 10 SCC 773 had considered the issue with regard to repeated adjournments in the light 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, the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [2023 AIR (SC) 1648]** wherein the Apex Court 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.

9. Further recently, the Hon'ble Supreme Court in “**Rabi Prakash Vs. State of Odisha**” **Special Leave to Appeal (Crl.) No(s).4169 of 2023** 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.”

10. Similarly, the Hon’ble Supreme Court in **“Dheeraj Kumar Shukla Vs. State of UP” Special Leave to Appeal (Crl.) No.6690 of 2022** 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 view of the aforesaid totality of facts and circumstances, especially in view of the facts that the bar contained under Section 37 of the NDPS Act will not apply to the present petition and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to grant regular bail to the petitioner.

13. 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.

14. 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.

15. Since the main petition has been allowed, all the pending application(s) also stand(s) disposed of.

21st July, 2023

Sonia Puri

(JASGUPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No