

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

(Sr. No. 216)

CRM-M-9653-2023(O&M)

Date of Decision:20.04.2023

Kuldeep Kumar @ Deep

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.K. Bishnoi, Advocate for the petitioner.

Mr. Satish Singla, Asst.A.G. Haryana.

JASGURPREET SINGH PURI J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.147 dated 18.07.2020, under Section 22-B of the NDPS Act, 1985 registered at Police Station Ding, District Sirsa.

2. It is submitted by the learned counsel for the petitioner that the petitioner is in custody for about 02 years and 08 months and the allegations against the petitioner along with co-accused were that there was an alleged recovery of 520 capsules of Tramadol Hydrochloride Diclofenac Sodium and Dicyclomin Hydrochloride and Chlorophernairmaine Maleate, which

although falls under the category of commercial quantity but the rigor of Section 37 of the NDPS Act will not apply in this case. He submitted that the other co-accused namely Kuldeep @ Kalu who is at the parity with the petitioner has been granted bail by this Court vide order dated 01.03.2023 in CRM-M-59798-2022 on the ground that the charges in the present case were framed on 10.12.2021 and after more than 01 year and 03 months not a single witness has been examined. He further submitted that even more than one month has already been elapsed after passing the aforesaid bail order by this court and no prosecution witness has been examined till now. He submitted that this Court, while keeping in view the entire factual position with regard to the repeated adjournments made by learned Trial Court, includingailable warrants issued against the prosecution witnesses and by referring to the *zimni* orders and also relying upon the judgment of Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (2022 (10) SCC 51*** and especially in the light of Article 21 of the Constitution of India, had granted regular bail to the aforesaid co-accused and the present petitioner is exactly at parity with aforesaid co-accused and, therefore, the petitioner be also granted regular bail on the same lines.

3. On the other hand, Mr. Satish Singla, Assistant Advocate General Haryana, has stated that it is correct that the petitioner is in custody for the last 02 years and 08 and charges were framed on 10.12.2021 and thereafter not even a single witness has been examined. He has, however, opposed the

grant of regular bail to the petitioner in the present case on the ground that the prayer of the petitioner is hit by the bar contained in Section 37 of the NDPS Act.

4. I have heard learned counsel for the parties.

5. So far as the issue with regard to the bar contained in Section 37 of the NDPS Act is concerned, the same has been discussed in detail in the earlier bail orders wherein the co-accused namely Kuldeep @ Kalu has been granted bail by this Court while referring to judgment of Hon'ble Supreme Court in **Satender Kumar Antil's** case (supra). The co-accused at that point of time had faced incarceration for about 02 years and 03 months and so far as the present petitioner is concerned, he has faced incarceration about 02 years and 08 months and therefore the petitioner is at parity with the aforesaid co-accused.

6. The Hon'ble Supreme Court in **Satender Kumar Antil's** case (supra) discussed the 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.”

7. Now recently, Hon’ble Supreme Court in ***Criminal Appeal No.943 of 2023*** titled as ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*** decided on 28.03.2023 also discussed the effect of Section 37 of the NDPS Act when there is undue delay in trial. 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."

8. In the facts and circumstances of the present case, it is clear that the trial has been delayed and bailable warrants were issued against the prosecution witnesses. It is a case which falls under the NDPS Act and normally in the cases under NDPS Act, the prosecution witnesses are police officials, except when in certain cases there are some independent witnesses or private witnesses.

9. Therefore, in view of the aforesaid peculiar facts and

circumstances of the present case and considering the aforesaid two judgments of the Hon'ble Supreme Court passed in *Satender Kumar Antil's* case (supra) and *Mohd. Muslim @ Hussain's* case (supra) coupled with the fact that the co-accused of the petitioner namely Kuldeep @ Kalu has already been granted bail by this Court on 01.03.2023 in CRM-M-59798-2022, this Court deems fit and proper to grant regular bail to the petitioner. 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.

10. 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.

(JASGURPREET SINGH PURI)
JUDGE

20.04.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No