

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10351-2023 (O&M)

Date of Decision: 28.08.2023

Gurpreet Singh @ Preet

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vivek K. Thakur, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, 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 the grant of regular bail to the petitioner in FIR No. 217 dated 19.12.2021, under Section 15C of NDPS Act, registered at Police Station Shahkot, District Jalandhar (Rural).

2. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is in custody from 19.12.2021 which is almost 1 year and 8 months. He submitted that the allegations against the petitioner and the other co-accused were that they were coming on a canter and there had been alleged recovery of 110 kgs of poppy husk from the canter. He submitted that petitioner is not involved in any other case and has got clean antecedents and it was a case which was planted by the police upon the petitioner. He submitted that the charges in the present case were framed on

16.07.2022 and has supplied the photocopies of all the interlocutory orders which have been passed by the learned Special Judge after the framing of the charges. The same are taken on record as Mark-X. While referring to the aforesaid orders, the learned counsel submitted that after the framing of the charges on 16.07.2022, the matter was adjourned for 16 times and right from the beginning, the prosecution witnesses were served and on 16.09.2022 the ASI Lakhbir Singh was summoned throughailable warrants because he was not appearing. Same was the position with PW SI Balkar Singh who also did not present in the Court despite being duly served and qua him alsoailable warrants were issued. He submitted that the aforesaid PW SI Balkar Singh is the I.O of the present case and ASI Lakhbir Singh is the recovery witness and both the witnesses are the material prosecution witnesses but they despite being served at the initial stages, the Court was constrained to issueailable warrants against them way back on first time on 16.09.2022. Thereafter on 15.10.2022, the aforesaid two witnesses namely, Balkar Singh and Lakhbir Singh were examined in chief partly and their remaining examination-in-chief was deferred. After the aforesaid date i.e. 15.10.2022 and till date these two witnesses have not appeared before the trial Court despite the fact that for 12 timesailable warrants were issued against them by the learned trial Court. He submitted that on some dates these witnesses were even bound down and on some dates it has been so recorded by the learned trial Court thatailable warrants have been executed against them and it is very strange that despite the fact theailable warrants were executed against them still they did not turn up and again repeatedly the trial Court was constrained to issueailable warrants against them. He submitted that till date only two witnesses have been

examined namely, Satnam Singh and Kashmir Singh. He submitted that so far as Satnam Singh is concerned, he was only a formal witness who had deposited the sample in the Forensic Laboratory and so far as the Kashmir Singh is concerned, he was the complainant who has seen the petitioner and had informed the senior police officer and thereafter one DSP was also called as per the prosecution story.

3. The learned counsel 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 contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are affected. He also referred to another judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]*** wherein the scope of Section 37 of the NDPS Act *vis-a-vis* Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. He also referred to a judgment of Supreme Court in ***Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)*** and also a recent judgment of Supreme Court in ***Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*** to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

3. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab has submitted that it is correct that the petitioner is in custody from 19.12.2021 which is almost 1 year and 8 months and charges were framed on 16.07.2022 and till date only two witnesses have been examined. He

submitted on instructions 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 recovered quantity from the petitioner and the other co-accused 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.

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

5. It is a case where the petitioner has already faced incarceration for 1 year and 8 months. The charges were framed on 16.07.2022 but only two witnesses have been examined. The petitioner is stated to be not involved in any other case and has got clean antecedents.

6. Since the alleged recovery from the petitioner and the other co-accused from a canter of which the petitioner is owner is concerned involves commercial quantity, this Court would therefore consider the bail petition of the petitioner in the light of Section Section 37 of the NDPS Act. As per the copies of the orders passed by the learned trial Court as supplied by the learned counsel for the petitioner Mark-X are concerned, a perusal of the same would show that for about 12 times bailable warrants were issued against those material witnesses who are either the I.O or the recovery witness and were actually the material witnesses in the present case. They had recorded their examination-in-chief on 15.10.2022 and thereafter for large number of times, bailable warrants were issued against them which were also executed qua them but despite bailable warrants being executed qua them still they did not care to depose before the trial Court and in total 12 times bailable warrants were issued against them.

7. Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)* has discussed this

serious issue. 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. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. 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. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla***'s case (supra) has observed 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.”

10. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (Supra)*** has also discussed the effect of Section 37 of the

NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

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.

11. In view of the aforesaid facts and circumstances, this Court has no option but to draw an adverse inference against the prosecution for the purpose of considering the effect of Section 37 of the NDPS Act. 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 material witnesses did not care to depose before the trial Court for large number of times even after recording their examination-in-chief to which he has no answer or any justification. The petitioner is stated to be having no criminal background. Therefore, so far as the first ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, this Court has prima facie reasons to believe only for the purpose of considering the prayer of the petitioner for the grant of regular bail that the petitioner is not guilty of offence at least at this stage. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be not involved in any other case nor it

is the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may repeat the offence or may abscond from justice. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner in the light of Article 21 of the Constitution of India.

12. 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.

13. 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.

28.08.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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