

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

CRM-M-14943-2023 (O&M)

Date of Decision: 03.10.2023

Ram Chander

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Garima Sharma, Advocate, for the petitioner.

Mr. Naveen Kumar Sheoran, DAG Haryana.

Ms. Puneeta Sethi, Senior Panel Counsel, for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.71 dated 16.12.2019, under Sections 8, 18, 20, 25, 29, 60 and 62 of the NDPS Act, 1985, registered at Police Station NCB Chandigarh.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 03 years, 09 months and 16 days, which is a very long custody. She submitted that in the present case after the completion of the investigation, challan was presented and charges were framed on 18.12.2020. She further submitted that allegation against the petitioner is that he along with co-accused, namely, Satvir Singh @ Satta were travelling in a car, wherein aforesaid co-accused Satvir Singh @ Satta was driving the car and the petitioner was sitting next to him. She submitted that the alleged

recovery of 4.800 kgs. of Opium and 500 grams of Charas was effected from a concealed place of the door of the car. She also submitted that co-accused namely, Satvir Singh @ Satta who was driving the said car has already been extended the benefit of regular bail by a Coordinate Bench of this Court vide order dated 14.08.2020 passed in CRM-M-20366-2020 but the petitioner is the owner of the car. She further submitted that the petitioner has been falsely involved in the present case because of the reason that he was earlier involved in two more cases under the NDPS Act, wherein the petitioner is an undertrial and in order to falsely implicate the petitioner in the present case, the present complaint has been filed.

3. Learned counsel for the petitioner further submitted that it is a case wherein after filing of the complaint by NCB, the learned Special Court, Ambala, framed the charges on 18.12.2020, which is almost 02 years and 09 months and till date only one prosecution witness has been examined in full and four partially and there is no justification for delay of the trial. She further submitted that the present petitioner is also at parity with the aforesaid co-accused Satvir Singh @ Satta and considering the long custody of the petitioner and the fact that for about 02 years and 09 months have elapsed after framing of charges but only one witness has been examined fully and four partially, the bar contained under Section 37 of the NDPS Act is not applicable to the present petitioner in the light of Article 21 of the Constitution of India.

4. Learned counsel further 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 effected. She 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 custody. She referred to another 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.

5. On the other hand, Ms. Puneeta Sethi, learned Senior Panel Counsel for respondent No.2-NCB submitted that so far as the custody of the petitioner is concerned, the same is correct. She submitted that only one prosecution witness has been examined fully and four partially. She submitted that the next date of hearing before the learned trial Court is 14.02.2024. She has however opposed the grant of bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in two more cases under the NDPS Act and the confiscated quantity of the contraband in the present case falls in the category of commercial quantity under the NDPS Act and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. She has not disputed the fact that co-accused Satvir Singh @ Satta has already been extended the

benefit of regular bail by a Coordinate Bench of this Court and the charges were framed by the learned Judge, Special Court, Ambala, on 18.12.2020.

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

7. It is a case where after the completion of investigation, the challan was presented and thereafter, the charges were framed on 18.12.2020 but it is almost 02 years and 09 months which have elapsed but only one prosecution witness has been examined fully and four partially. The learned trial Court has adjourned the case for February, 2024 and it appears that date of about five to six months has been given and there is every possibility that the trial will be delayed. The petitioner has already faced incarceration for 03 years, 09 months and 16 days.

8. 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”.

9. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. The relevant portion of the aforesaid judgment contained in para Nos.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.

10. 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.”

11. Recently 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 Nos.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.

12. In view of the aforesaid totality and circumstances of the present case, the pendency of two other cases under the NDPS Act against the petitioner cannot be a ground for denial of bail to the petitioner and considering the long custody of the petitioner and the fact that for 02 years and 09 months after the framing of the charges, only one prosecution witness has been examined fully and four partially and the learned trial Court has also adjourned the case for five to six months and also considering the judgments of the Hon'ble Supreme Court as aforestated, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially in the light of Article 21 of the Constitution of India.

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.

(JASGURPREET SINGH PURI)
JUDGE

03.10.2023
Mangal Singh

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