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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14138-2023
Date of decision: 05.09.2023

SOHAN LAL @ MONI @ DANDU

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D. S. Virk, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.264 dated 21.05.2021, under Section 15C of the NDPS Act (Sections 27A and 29 of the NDPS Act added later on), registered at Police Station Kaithal City, District Kaithal, Haryana.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 21.05.2021, which is more than 2 years and 3 months. He further submitted that as per the allegations, the police had apprehended the petitioner as he was driving a canter from where there was a recovery of 128.600 kgs. of poppy husk, which was at a concealed place in the canter. He further submitted that thereafter the investigation of the case was conducted and challan was

presented on 16.11.2021 but the charges qua the petitioner were earlier framed on 07.07.2022 and thereafter the supplementary challan was presented and thereafter again the matter was adjourned for re-framing of charges and even till date the charges have not been re-framed with a result that the total incarceration of the petitioner has come out to be more than 2 years and 3 months. He further submitted that the petitioner has already faced incarceration for the aforesaid period and the trial of the case may take a long time to conclude and it was because of the fault of police that they did not present a consolidated challan and even otherwise also the trial of the petitioner after the framing of charges qua him on 07.07.2022 was never segregated. He further submitted that the long custody and delay in the trial is not attributable to the petitioner and now the matter is being adjourned from time to time for arguments on framing of charges. He also submitted that considering the aforesaid facts and circumstances of the present case, even if the recovery from the petitioner was of 128.600 kgs. of poppy husk, which falls in the category of commercial quantity under the NDPS Act, but the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view of the judgments of Hon'ble Supreme Court in "Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR(SC) 1648, Special Leave to Appeal (Criminal) No.6690 of 2022 titled as "Dheeraj Kumar Shukla versus The State of Uttar Pradesh" and Special Leave to Appeal (Criminal) No.4169 of 2023 titled as "Rabi Prakash versus The State of Odisha". He further submitted that the petitioner was earlier involved in one case under the NDPS Act but he has already

undergone his sentence and the petitioner was falsely implicated in the present case only because he was earlier involved in the other case.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has filed status report by way of affidavit of Deputy Superintendent of Police, HPS, (AEC) Kaithal, which is taken on record. He further submitted that it is correct that the petitioner is in custody from 21.05.2021, which is for more than 2 years and 3 months and qua him the charges were framed on 07.07.2022 but thereafter the matter was fixed for re-framing of the charges and subsequently the challan against the other co-accused was presented and till date the charges have not been re-framed and therefore no prosecution witness could be examined till date. He has however opposed the grant of regular bail to the petitioner on the ground that the quantity involved is commercial quantity under the NDPS Act and petitioner was earlier involved in one more case under the NDPS Act in which he has already undergone his sentence.

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

5. It is a case where the petitioner has faced incarceration for more than 2 years and 3 months. The petitioner was arrested on 21.05.2021 and the allegations against the petitioner were that he was the driver of the canter from where there was a recovery of 128.600 kgs. of poppy husk. The aforesaid quantity undoubtedly falls in the category of commercial quantity under the NDPS Act therefore this Court will have to consider the prayer of the petitioner in the light of Section 37 of the NDPS Act.

6. The Hon'ble Supreme Court in **Mohd. Muslim Hussain's case** (**supra**) has dealt with this issue with regard to delay in trial and long custody of

the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. 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.

7. 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.”

8. Recently, the Hon'ble Supreme Court in **Rabi Prakash's case** (**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.”

9. In the aforesaid totality and facts and circumstances of the present case, even till date the charges have not been framed despite the fact that challan was presented on 16.11.2021 and the reason was that the supplementary challan was being presented by the police and consequently the net result of the same was that the petitioner had to face incarceration for more than 2 years and 3 months for no fault of his. There had been a delay in the trial which is not attributable to the present petitioner. Therefore, in the light of the aforesaid judgements of the Hon’ble Supreme Court and also in the light of Article 21 of the Constitution of India, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner.

10. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

11. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

05.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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