

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CRM-M-14894 of 2023 (O&M)

Date of Decision:21.07.2023

Pritpal Singh @ Pitta

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manvinder Sidhu, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

CRM-28879 of 2023

Vide this application, the applicant-petitioner seeks to place on record the copy of notice dated 10.11.2019 issued to him under Section 50 of the NDPS Act.

For the reasons mentioned in the application, the same is allowed and the copy of the aforesaid notice dated 10.11.2019 is taken on record as Annexure P-2.

Main case

1. This 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.142 dated 10.11.2019, under Section 22 of the NDPS Act, registered at Police Station

Baragudha, District Sirsa.

2. It has been submitted by learned counsel for the petitioner that it is a case where the petitioner has already faced incarceration for about three years and eight months which is a very long custody and the charges in the present case were framed on 28.10.2021 and he referred to the zimni orders passed by the learned trial Court by which the prosecution witnesses did not appear despite service and on 21.04.2022 bailable warrants in the sum of Rs.5000/- with one surety in the like amount were issued and now even after the passing of the aforesaid order on 21.04.2022 passed by the learned trial Court about one year and four months have still elapsed and after the framing of the charges one year and ten months have elapsed and only three prosecution witnesses have been examined. He submitted that the learned trial Court had to use coercive methods to secure the presence of the prosecution witnesses who are the police officials. He referred to another order passed by the learned trial Court on 04.10.2022 wherein two prosecution witnesses were examined and the remaining prosecution witnesses were summoned for 25.05.2023 which was more than 7½ months. He submitted that the trial Court had adjourned the case for 7½ months straightway with the result that now the petitioner has faced incarceration for about three years and eight months and the delay was not because of the fault of the petitioner but because of the aforesaid reasons. He submitted that the petitioner is not involved in any other case and has clean antecedents and due to the political enmity, the name of the present petitioner has been falsely implicated and there was an alleged recovery of 23,200 tablets of Tramadol from the petitioner. He also submitted that his prayer may be considered in the light of long custody of the petitioner and was also referred to the

judgment of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51, Mohd Muslim @ Hussain versus State (NCT of Delhi) 2023 AIR (SCC) 1648, Rabi Prakash v. The State of Odisha (Special Leave to Appeal (Crl.) No.(s) 4169 of 2023) and Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022).

3. On the other hand, Ms. Harpreet Kaur, learned AAG, Haryana has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not involved in any other case and has clean antecedents. She has however opposed the grant of bail to the petitioner on the ground that the recovery of 23,200 tablets of Tramadol from the petitioner falls within the category of commercial quantity under the NDPS Act and therefore 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 about three years and eight months which is a long custody. The charges in the present case were framed on 28.10.2021 which is almost one year and ten months ago. A perusal of the one of the orders dated 04.10.2022 passed by the learned trial Court would show that after examining two prosecution witnesses, the case was adjourned for 7½ months. The reliance upon the aforesaid judgments passed by the Hon'ble Supreme Court is well placed.

6. In view of the facts and circumstances of the present case, the custody of the petitioner would be considered in the light of Article 21 of the Constitution of India. The Hon'ble Supreme Court in Satender Kumar Antil v. Central

Bureau of Investigation and another 2022 (10) SCC 51 has dealt with the issue with regard to the repeated adjournments and its effect upon the fundamental rights of the accused. The relevant portion of 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”. ”

7. Thereafter, the Hon'ble Supreme Court in Mohd Muslim @ Hussain versus State (NCT of Delhi) Criminal Appeal No.943/2023, date of decision 28.03.2023, the Hon'ble Supreme Court again reiterated that the delayed trial and the long custody is a factor which can be considered for grant of bail given

peculiar facts and circumstances of each and every case. The relevant portion 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 19 (2009) 2 SCC 624 14 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. The Hon'ble Supreme Court in **Rabi Prakash's** case has observed 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 a recent judgment of 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. In view of the aforesaid facts and circumstances, this Court is of the view that considering the long custody of the petitioner which is three years and eight months and considering the fact that the petitioner has clean antecedents and is not involved in any other case as per learned counsel for the parties, the petitioner deserves the concession of regular bail in the light of Article 21 of the

Constitution of India. Consequently, the 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.

11. However, anything observed hereinabove shall not be treated as an expresion of opinion on merits of the case and is only meant for the purpose of decision of both these petitions.

(JASGURPREET SINGH PURI)
JUDGE

July 21, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No