

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

204**CRM-M-15907 of 2022****Date of Decision:21.09.2023**

Surinder Singh @ Sunny

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Ahluwalia, 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.136 dated 22.04.2021, under Sections 18/61/85 of the NDPS Act, registered at Police Station Civil Lines, Patiala (wrongly mentioned as Police Station Civil Lines, Nabha in the impugned order).

2. Learned counsel for the petitioner submitted that it is a case where the petitioner is in custody from 02.04.2021, which is almost 2½ years and the charges in the present case were framed on 17.12.2021 which is almost 1 year and 10 months but only 4 prosecution witnesses out of 11 cited witnesses have been examined. He submitted that at the time of the registration of the present FIR, the petitioner is not involved in any other case and has clean antecedents but it was only thereafter that, two more FIRs were registered against him while he was in

custody in the present case. He further submitted that the allegations against the petitioner were with regard to recovery of 2 kgs. and 600 grams of opium which is slightly higher than the commercial quantity since the commercial quantity is 2 kgs. and 500 grams and the aforesaid quantity was weighed alongwith the plastic bag.

3. Learned counsel for the petitioner further submitted that be that as it may, after the framing of the charges on 17.12.2021, the prosecution witnesses who are none other than the police officials who had brought the criminal law into motion did not depose before the Court despite being served at the initial stages with the result that the learned trial Court was constrained to issue bailable warrants against these official witnesses who are the prosecution witnesses and the police officials for six times. During the course of arguments, learned counsel for the petitioner has also supplied photocopies of the interlocutory orders passed by the learned trial Court after the framing of the charges and the same are hereby taken on record as Mark-X. While referring to the aforesaid orders, he submitted that even qua the investigating officer bailable warrants were issued and twice after bailable warrants issued against him, he appeared and he was examined in-chief but his cross-examination was deferred and he was bound down to appear on the next date of hearing and again he did not appear and again on the next date of hearing he had appeared and same thing was repeated with regard to the other prosecution witnesses qua whom repeatedly bailable warrants were issued by the learned trial Court. He also submitted that the submissions made by him with regard to the false implication get substantiated from the fact that there was no justification for the prosecution witnesses to have absented from the Court despite

bailable warrants being issued against them and with the result that the petitioner has to face incarceration almost 2½ years for no fault of the petitioner.

4. Learned counsel for the petitioner also referred to the judgments 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) and submitted that considering the long custody of the petitioner, he may be considered for the grant of regular bail.

5. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that after the framing of the charges on 17.12.2021 almost 1 year and 10 months have lapsed but only 4 prosecution witnesses have been examined. He, has however, opposed the grant of bail to the petitioner on the ground that the total quantity recovered from the petitioner is although marginally higher than the commercial quantity but it still 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.

6. I have heard learned counsel for the parties.

7. It is a case where the petitioner has already faced incarceration for about 2½ years since he was arrested on 22.04.2021. The charges in the present case were framed on 17.12.2021 which is almost 1 year and 10 months and as per learned counsel for the parties only 4 prosecution witnesses have been examined

till date. A perusal of the zimni orders which have been supplied by learned counsel for the petitioner during the course of arguments would show that the prosecution witnesses were served at the initial stages and they did not appear to depose before the Court although these are the persons who had set the criminal law into motion and the learned trial Court was constrained to issue summons to them for a number of times and even bailable warrants for six times to those persons who are the police officials. During the course of arguments, this Court had raised a query to learned State counsel as to what was the justification as to why the prosecution witnesses did not care to depose to which he could not offer any explanation.

8. The trial in the present case has got delayed clearly because of the non-deposition of the prosecution witnesses and the custody of the petitioner has come out to be about 2½ years. The Hon'ble Supreme Court in ***Satender Kumar Antil's*** case (supra) 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”.

9. Similarly, the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain's*** case (supra), 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.”

10. The Hon'ble Supreme Court in **Rabi Prakash's** case (supra) 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.”

11. 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.”

12. This Court is of the view that considering the facts and circumstances of the present case in the light of the aforesaid judgments of the Hon'ble Supreme Court, the petitioner deserves the concession of regular bail in the light of Article 21 of the Constitution of India. The bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the custody of the petitioner and the fact that the prosecution witnesses did not appear before the Court for deposition for long time despite being bailable warrants issued against them. 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.

13. 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 both these petitions.

(JASGURPREET SINGH PURI)
JUDGE

September 21, 2023

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