

209
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17929-2022 (O&M)

Date of Decision: 04.07.2023

Suba Singh

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.S. Sandhu, 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 grant of regular bail to the petitioner in FIR No.0923 dated 02.12.2020, under Section 18 of NDPS Act, registered at Police Station Karnal Sadar, District Karnal.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 02.12.2020 which is more than 2 years and 7 months. He submitted that it is a case where the petitioner has been falsely implicated in the present case because of rivalry with the police. He submitted that in the year 2005 and 2006, he was falsely involved in two cases under the NDPS Act and he has since been acquitted in both cases and it was because of this reason that he has been falsely implicated in the present case

wherein there was alleged recovery of 7 kg and 500 grams of opium from

the petitioner and the co-accused while they were in the car.

3. Learned counsel further submitted that it is not only the long custody of more than 2 years and 7 months which would entitle the petitioner for the grant of regular bail in view of the judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]* but also the facts of the present case suggest that even the notice which was given under Section 50 of the NDPS Act was defective in nature. During the course of arguments, the learned counsel for the petitioner has also referred to notice under Section 50 NDPS Act and also the reply filed by the State and contended that as per the notice itself, an offer was given to the petitioner that he has a legal right for his own search and the search of his vehicle. He submitted that such an offer for search of vehicle is not warranted under the provisions of the NDPS Act. He submitted that in addition to the above, the language of the notice would suggest that an offer was given that the petitioner may call a Gazetted Officer or a Magistrate which is also not the intention of the provisions of Section 50 of the NDPS Act and therefore, there is a violation of the aforesaid provision and which is fatal to the prosecution. He submitted that be that as it may considering the long custody of the petitioner and the fact that six witnesses have already been examined, he may be considered for the grant of regular bail and in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

4. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that so far as the custody period of the petitioner is concerned, the same is not in dispute and at present the petitioner is not involved in any other case. Earlier, he was involved in two more cases under the NDPS Act in

which he has been acquitted. He has however submitted that since the total recovery from the petitioner and the co-accused falls under the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. .

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

6. The petitioner has already faced incarceration for more than 2 years and 7 months. Six witnesses have already been examined. The petitioner is not involved in any other case under the NDPS Act and earlier he was involved in two cases under the NDPS Act in which according to the learned counsel for the parties, he has since been acquitted. This Court at this stage would not go into the merits of the contentions raised by the learned counsel for the petitioner pertaining to the effect of the language used in the notice under Section 50 of the NDPS Act because it is only the subject matter at the time of trial but for the purpose of considering the prayer of the petitioner for grant of bail, the aforesaid language of the notice would certainly have bearing for the purpose of bar contained under Section 37 of the NDPS Act. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with the issue pertaining to delay in the trial *vis-a-vis* bar contained under Section 37 of the NDPS Act. 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.

7. The petitioner has faced incarceration for more than 2 years and 7 month and therefore, it appears that the trial is not progressing fast. Therefore, this Court is of the view only for the purpose of considering the effect of Section 37 of the NDPS Act, the petitioner is entitled for the grant of regular bail in the light of Article 21 of the Constitution of India and also in the light of the judgment of the Hon'ble Supreme Court in the case of **Mohd. Muslim @ Hussain (Supra)**.

8. 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.

9. 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.

04.07.2023

rakesh

Whether speaking

Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

:

:

Yes/No

Yes/No