

CRM-M-18200-2023

219

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-18200-2023
Date of Decision: 21.04.2023

Krishan Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Kanishk Sarup, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.127 dated 06.05.2021, under Section 17 of the N.D.P.S. Act, 1985, registered at Police Station Civil Line, Sirsa, District Sirsa.

2. It has been submitted by learned Senior Counsel for the petitioner that the petitioner is in custody since 06.05.2021, which is more than 1 year and 11 months. He further submitted that in the present case the allegations against the petitioner were with regard to recovery of 5 kgs. & 40 grams of *Opium*. He also submitted that the petitioner was falsely implicated in the present case and in fact an application was also filed before the learned trial Court for preservation of the call record and the charges in the present case were framed by the learned trial Court on 09.02.2022, which is

1 year and 2 months ago, but till date no prosecution witness has been examined. He further submitted that the petitioner is having clean antecedents and is not involved in any other case and his earlier bail petition was dismissed by this Court on 01.04.2022, which is more than one year ago and even till date no witness has been examined.

3. During the course of arguments, the learned Senior Counsel has supplied the zimni orders passed by the learned trial Court after the framing of the charges and while referring to the same, he has submitted that the trial Court had adjourned the trial for number of times and even the bailable warrants were issued against the prosecution witnesses and despite the fact that bailable warrants were issued for number of times, no prosecution witness has cared to depose before the Court for more than 1 year and 2 months after the framing of the charges. He further submitted that considering the background of the petitioner where he is not involved in any other case and had to face incarceration for 1 year and 11 months for no fault of his and it was only because of the conduct of the prosecution witnesses that they did not care to depose before the Court. He also submitted that the present FIR was lodged and the criminal law was set into motion by the police officials, who are the prosecution witnesses and there is no justification for not deposing before the Court and consequence of the same was that the petitioner, who is having clean antecedents, had to face incarceration for 1 year and 11 months.

4. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, to contend that

the Hon'ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the Right to Life under Article 21 of the Constitution of India. He also referred to a latest judgment of the Hon'ble Supreme Court passed in ***Criminal Appeal No.943 of 2023*** titled as "***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)***" decided on 28.03.2023 to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

5. On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that the petitioner has faced incarceration for 1 year and 11 months and the charges in the present case were framed on 09.02.2022 and till date no prosecution witness has been examined. She further submitted on instructions that it is also correct that the petitioner is not involved in any other case. She has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner was 5 kgs. & 40 grams of *Opium* which falls in the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

7. The petitioner has faced incarceration for 1 year and 11 months. The charges in the present case were framed on 09.02.2022 and more than 1 year and 2 months has elapsed but no prosecution witness has been examined till date. The learned Senior Counsel while referring to the zimni orders passed by the learned trial Court after framing of the charges has

submitted that the trial Court had adjourned the case for number of times and for number of times, the bailable warrants were issued against the prosecution witnesses but till date no witness has been examined.

8. During the course of arguments, this Court had raised a specific query to the learned State counsel that as to what was the justification as to why in the present case the prosecution witnesses have not deposed before the Court for more than 1 year and 2 months after the framing of the charges to which she could not offer any justification or explanation in this regard.

9. The Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)*** discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.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.”

10. Now recently, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the issue with regard to delay in trial and the long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. The relevant Paras 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 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.”

11 Considering the totality of the facts and circumstances of the present case wherein no justification has come forth from the State Counsel as to why for more than 1 year and 2 months have elapsed after the framing of the charges that no prosecution witness has been examined despite the fact that for number of times, bailable warrants were issued against them, this Court has, therefore, *prima facie* reasons to believe that at least at this stage only for the purpose of considering the prayer of regular bail that the bar contained under Section 37 of the NDPS Act will not apply in the light of the aforesaid judgment of the Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** and in the light of Article 21 of the Constitution of India. Apart from the above, the petitioner is stated to be not involved in any other case and is having clean antecedents nor it is the case of the learned State counsel that in case the petitioner is released on regular bail then he may repeat the offence or may abscond or flee from justice or he

may influence the witnesses.

12. In view of the above, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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 present petition.

21.04.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |