

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

213

CRM-M-21451 of 2023

Date of Decision:04.05.2023

Bachan Singh

....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

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Present: Mr. Sushil Sheoran, Advocate,  
for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana

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**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.602 dated 19.09.2020, under Section 20C/29 of the NDPS Act and Section 201/204 IPC, registered at Police Station Hansi City, District Hisar.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody from 24.09.2020, which is about two years and eight months. He submitted that the investigation of the case has already been completed and thereafter the report under Section 173 of the Code of Criminal Procedure has been submitted to the competent Court and thereafter charges were framed on 18.05.2022 and almost 11 months have elapsed but not even a single prosecution witness has been examined. He submitted that the petitioner has clean antecedents

and is not involved in any other case and it was because of the political enmity in the village that the present case has been planted upon the petitioner. He submitted that as per the allegations, the police party on the basis of secret information searched the house of the petitioner there was a recovery of 140 kgs. of Ganja from the courtyard of his house and not from the petitioner. He submitted that in fact the place from where the aforesaid contraband was recovered was not within the boundaries of the house of the petitioner. He further submitted that there was no recovery from the conscious possession of the petitioner and he has already faced incarceration for about 2 years and 8 months and there is no justification as to why for 11 months after the framing of the charges not even a single witness has been examined. He submitted that it is a clear cut case of false implication especially considering the fact that he has no criminal antecedents, therefore the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Amit Aggarwal, learned DAG, Haryana has submitted that so far as the custody period of the petitioner is concerned, it is correct that the petitioner is in custody for two years and eight months and the charges were framed 11 months ago on 18.05.2022 but till date no prosecution witness has been examined. He also submitted, on instructions, that the petitioner has clean antecedents and is not involved in any other case. He has however opposed the grant of bail to the petitioner on the ground that since the quantity recovered in the present case is a 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.

4. I have heard learned counsel for the parties.

5. The petitioner has already faced incarceration for about two years and eight months. As per learned counsel for the parties, petitioner has clean antecedents and is not involved in any other case. In the present case charges were framed on 18.05.2022 but no prosecution witness has been examined till date despite the fact that 11 months have elapsed after the framing of the charges. On a query being raised to learned State counsel, as to what was the justification for the same to which he was not able to justify the same. The stand of learned counsel for the petitioner is that there was no recovery from the conscious possession of the petitioner but the alleged recovery was effected from a place which did not fall within the premises of the house of the petitioner where as per the prosecution story the area from where the contraband was recovered fell within the boundaries/gate of the house of the petitioner. The aforesaid position with regard to the place of recovery can be ascertained only at the time of consideration of evidence.

6. The total custody of the petitioner is about 2 years and 8 months and for 11 months after the framing of the charges, no prosecution witness has been examined. 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. In a recent judgment of 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 Malik<sup>19</sup>). 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."*

8. In the present case, the facts and circumstances therefore suggest that in view of the total custody of the petitioner which is about two years and eight months and the petitioner has clean antecedents and also no justification has come forth as to why for large number of times the prosecution witnesses did not care to depose before the learned trial Court for eleven months after the framing of the charges, the bar contained under Section 37 of the NDPS Act will not apply in the present case especially considering the aforesaid facts and circumstances and also in the light of Article 21 of the Constitution of India.

9. In view of the facts and circumstances as discussed above, this Court is of the view that the petitioner deserves the concession of regular bail. 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.

10. 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 the present petition.

(JASGURPREET SINGH PURI)  
JUDGE

May 04, 2023  
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| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |