

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

214

CRM-M-21771 of 2023

Date of Decision:05.05.2023

Anthony Ugochukwu Okpala

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Davinder Bir Singh, Advocate,
for the petitioner.

Ms. Akshita Chauhan, 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.0042 dated 19.03.2020, under Section 21, 25, 61, 85 of the NDPS Act (Section 29 of the NDPS and Section 473 IPC added later on), registered at Police Station City Jagraon, District Ludhiana Rural.

2. It is submitted by learned counsel for the petitioner that it is case where the petitioner is a foreign national who has been falsely implicated in the present case by the police. He submitted that as per the FIR, the police has apprehended two co-accused namely Lal Singh @ Gagan and Paramjit Singh @ Ajay from whom there had been alleged recovery of 2 kgs. of heroin. Thereafter, during interrogation, the aforesaid two accused disclosed the name of one Sukhjit

Singh @ Sukha and also disclosed that they used to obtain the same from one Nigerian namely Affae @ Cash who is residing in the upper flat of Dabha, Ranjit Vihar, Gali No.3, Dwarka, Sector 23, New Delhi and thereafter a raid was conducted on the aforesaid residence and rather the name of the petitioner is Anthony Ugochukwa Okpala whereas even as per the disclosure statement Annexure P-3, the aforesaid co-accused namely Affae @ Cash and therefore it was also a case of mis-taken identity. He submitted that the petitioner has clean antecedents and is not involved in any other case and he has now faced incarceration for more than three years despite the fact that initially no recovery was effected from the petitioner. He submitted that the charges in the present case were initially framed on 13.12.2021 and thereafter again re-framed on 19.07.2022 and till date only six prosecution witnesses out of 28 have been examined. Learned counsel for the petitioner has prayed that the petitioner may be considered for the grant of regular bail especially on the ground of his long custody.

3. On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and the petitioner is in custody for more than three years since 20.03.2020 and it is also correct that initially no recovery was effected from the present petitioner. She also submitted, on instructions, that the petitioner has clean antecedents and is not involved in any other case but she has however opposed the grant of bail to the petitioner on the ground that initially the subject matter of the present FIR pertains to the recovery of 2 kgs. of heroin and there was no recovery from the petitioner at the spot but thereafter on his disclosure statement there had been recovery of 320 grams of heroin from the petitioner near the wall of the

University at Ludhiana. She submitted that in view of the above, the petitioner is not entitled for the grant of regular bail.

4. I have heard learned counsel for the parties.

5. The total incarceration of the petitioner is more than three years. As per the prosecution story, the police had apprehended two persons namely Lal Singh @ Gagan and Paramjit Singh @ Ajay and thereafter on their further disclosure statement, the police conducted a raid upon the address given by them at New Delhi from where the petitioner was apprehended although the name mentioned in the disclosure statement Annexure P-3 was Affae @ Cash whereas the name of the petitioner is Anthony Ugochukwu Okpala. Even as per the State, there was no recovery effected from the petitioner at the spot but it was thereafter on the disclosure statement, the recovery of 320 grams of heroin was effected near the wall of the University at Ludhiana. The petitioner is stated to be not involved in the any other case and has clean antecedents. However, the fact remains that the petitioner has already faced incarceration for more than three years

6. The total custody of the petitioner is more than three years and only six prosecution witnesses have been examined till date. 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 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. Considering the totality of the facts and circumstances of the present case, the petitioner has already faced incarceration for more than three years and initially there was no recovery from the petitioner but it was only after on the basis of disclosure statement of the co-accused, a raid was conducted in a flat at New Delhi that the petitioner was apprehended from where again no recovery was effected but after that on his disclosure statement there was a recovery of 320 grams of heroin near the wall of the University at Ludhiana.

9. Therefore, considering the aforesaid facts and circumstances and

especially the long custody of the petitioner which is more than three years and in the light of Article 21 of the Constitution of India, 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. There shall be an added condition for grant of bail i.e. the petitioner shall surrender his passport before the learned trial Court in case the same has already not submitted before either the investigating agency or before the learned trial Court.

11. 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 05, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No