

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-23761-2022 (O&M)
Date of Decision: 14.11.2023

Vakil	Versus	Petitioner
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shashikant Singh , Advocate for
Mr. Pardeep Goyal, 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. 232 dated 22.12.2021, under Section 22(c) of the NDPS Act, 1985, registered at Police Station Dhauj, District Faridabad.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 22.12.2021, which is almost 1 year, 10 months and 20 days and only 6 out of 18 prosecution witnesses have been examined. He further submitted that the petitioner has clean antecedents and is not involved in any other case and was falsely implicated in the present case with the allegation that there was a recovery of 25 injections of Buprenorphine having 2 ml. each. He submitted that the total weight therefore comes to be 50 ml. which although falls in the category of commercial quantity under the provisions of the NDPS Act but as per Rule 66 of the NDPS Rules, if the total recovery is less than 100 doses and it is to

be used for medical purposes then Rule 66 will apply and it is within the permissible limit. He submitted that it is yet to be seen at the time of trial as to whether it was to be used for personal use or not and also refer to judgment of this Court in '**Sukhwinder Singh @ Vicky Versus State of Punjab, 2021 (1) R.C.R. (Criminal) 177**' to contend that considering the aforesaid circumstances and particularly that the petitioner has clean antecedents, he is entitled for grant of regular bail. He also submitted that even otherwise also considering the long custody of the petitioner, he is also entitled for grant of regular bail in view of the judgment of Hon'ble Supreme Court "**Satender Kumar Antil versus Central Bureau of Investigation and another**", 2022(10) SCC 51 and "**Rabi Prakash versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023** and a latest judgment of Hon'ble Supreme Court in **Manish Sisodia versus Central Bureau of Investigation**, arising out of **Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023** in this regard.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that the custody of the petitioner is not in dispute and it is also correct that the petitioner is not involved in any other case and has clean antecedents. He has opposed the bail only on the ground of applicability of Section 37 of the NDPS Act.

4. I have heard the learned counsels for the parties.

5. The petitioner is in custody from 22.12.2021 which is almost 1 year, 10 months and 20 days and as per the learned counsel for the parties only 6 out of 18 prosecution witnesses have been examined.

6. Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)**

has discussed this serious issue with regard to delay in trial and its effect on

the Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“49. 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. The Hon'ble Supreme Court in **Rabi Prakash's case (supra)** has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in

“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.”

8. Recently, the Hon'ble Supreme Court in **Manish Sisodia's case** (**supra**) has observed as under:-

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional

mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

9. The alleged recovery from the petitioner is 25 injections of Buprenorphine having 2 ml. each. The petitioner is not involved in any other case and has clean antecedents as per learned counsel for the parties. The prayer of the petitioner is for grant of regular bail, which is covered by judgment passed by this Court in '**Sukhwinder Singh @ Vicky's case (supra)**' and therefore, the provisions of Section 37 of the NDPS Act will not apply to the petitioner. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

10. Therefore, considering the aforesaid facts and circumstances and particularly the long custody of the petitioner, this Court deems it fit and proper to grant regular bail to the petitioner.

11. Consequently, 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.

12. 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.

(JASGURPREET SINGH PURI)
JUDGE

14.11.2023
‘Rajneesh’

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No