

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22141-2023 (O&M)
Date of Decision: 22.11.2023

(I)
Gurpal Singh @ PalluPetitioner(s)
Versus
State of PunjabRespondent(s)

CRM-M-43551-2023 (O&M)

(II)
Amandeep Singh @ SonuPetitioner(s)
Versus
State of PunjabRespondent(s)

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ajay Partap Singh, Advocate for
Ms. Renu Arora, Advocate,
for the petitioner in CRM-M-22141-2023.

Mr. Vipul Jindal, Advocate,
for the petitioner in CRM-M-43551-2023.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with
the consent of learned counsel for the parties since both the petitions arise
out of the same FIR and the prayer in both the cases is for grant of regular

bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 53 dated 16.08.2021, under Sections 22, 29 of NDPS Act and Section 25 of Arms Act, registered at Police Station Rawal Pindi, District Kapurthala.

3. Learned counsels appearing on behalf of both the petitioners have submitted that both the petitioners are in custody for 2 years and 3 months and the allegations against the petitioners were that the police while checking for bad elements had apprehended both the petitioners and there had been alleged recovery of 13 injections of Buprenorphine from the petitioner [Amandeep Singh @ Sonu](#) and 12 injections of Buprenorphine from the petitioner [Gurpal Singh @ Pallu](#) alongwith .32 bore pistol and three live cartridges. They further submitted that both the petitioners were falsely implicated in the present case because of the fact that earlier both the petitioners have been involved in some cases under the NDPS Act and one of the petitioner namely, [Gurpal Singh @ Pallu](#) was involved in one case under Section 307 IPC as well. They further submitted that one injection of Buprenorphine consists of 2 ml. and, therefore, so far as the petitioner [Amandeep Singh @ Sonu](#) is concerned, the total injections were 13 and, therefore, the quantity was 26 ml. of Buprenorphine whereas the commercial quantity as per the NDPS Act is 20 ml. and so far as the petitioner [Gurpal Singh @ Pallu](#) is concerned, the total injections were 12 and, therefore, the quantity was 24 ml. and from both the petitioners the recovery was marginally higher. In order to further substantiate their

arguments regarding false implication, they submitted that the charges in the present case were framed on 17.03.2022 which is more than 1½ years ago and after the framing of the charges, the prosecution witnesses who are the police officials who have apprehended the petitioners and have put the criminal law into motion failed to depose before the Court despite repeated summons and bailable warrants issued against those police officials. They referred to copies of the interlocutory orders which were passed by the learned trial Court and have supplied a copy of the same to this Court which is taken on record as Mark-X. They further submitted that the learned trial Court was constrained to issue bailable warrants against these police officials who are the prosecution witnesses for 12 times but they did not care and bother to appear before the Court for deposition and it was thereafter that only one prosecution witness namely, ASI Lakhwinder Singh was examined and this prosecution witness was only a formal witness because he was although shown to be a part of the police who was present on the spot but he was not a signatory to any of the memos whereas the material witnesses who were part of the police party have not been examined and qua them bailable warrants have been issued and the reason as to why they were not deposing was that the petitioners were falsely implicated by them.

4. Learned counsels further referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51] and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the

Constitution of India are effected. They also referred to another judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]* wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. They referred to another judgment of Supreme Court in *Dheeraj Kumar Shukla v. The State of Uttar Pradesh, 2023 SCC Online SC 918* and also a recent judgment of Supreme Court in *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

5. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab has submitted that so far as the custody of both the petitioners is concerned, the same is correct. He submitted that the charges were framed on 17.03.2022 and more than 1½ years elapsed but only one witness has been examined as aforesaid. He however submitted that since both the petitioners are involved in other cases under the NDPS Act especially the petitioner [Gurpal Singh @ Pallu](#) who is involved in one more case under the NDPS Act, one under the Prisons Act and one under 307 IPC and the petitioner [Amandeep Singh @ Sonu](#) is involved in two more cases under the NDPS Act and they being habitual offenders are not entitled for grant of regular bail. He has however opposed the grant of regular bail to the petitioners on the ground that the confiscated quantity falls in the category of commercial quantity and, therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

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

7. It is a case where both the petitioners are in custody for 2 years and 3 months as per the learned counsel for the parties. The recovery from them was only 13 injections of Buprenorphine from the petitioner **Amandeep Singh @ Sonu** and 12 injections of Buprenorphine from the petitioner **Gurpal Singh @ Pallu**. The recovery is marginally higher than the commercial quantity as defined under the NDPS Act. The objection raised by the learned State counsel with regard to the bar of Section 37 of the NDPS Act has to be considered in the light of facts and circumstances of the present case.

8. Charges in the present case have been framed on 17.03.2022 which is almost 1 year and 8 months and as per the learned counsel for the parties, only one witness has been examined till date and he is a person who was not even signatory to any of the memos of recovery etc. As per the learned counsel for the petitioners the learned trial Court was constrained to issueailable warrants for 12 times to those prosecution witnesses who were part of the police party as well and those were the persons who had put the criminal law into motion but they failed to appear before the Court for deposition. During the course of arguments a specific query was raised to the learned State counsel as to what was the justification as to why these prosecution witnesses did not care to depose before the trial Court to which he could not offer any justification with regard to the same.

9. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of 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”.

10. Recently also the 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.

11. The Hon'ble Supreme Court in ***Dheeraj Kumar Shukla***'s case (supra) has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

12. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (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 para No.4 is reproduced as under:-

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.

13. After hearing the learned counsel for the parties, this Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner and the stage of the trial whereby more than 1 year and 8 months have elapsed after the framing of the charges but only one witness has been examined, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the light of Article 21 of the Constitution of India.

14. Consequently, both the petitions are allowed. Both the petitioners 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.

15. 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 petitions only.

22.11.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking : Yes/No
Whether reportable : Yes/No