

248 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22417-2023
DECIDED ON: 11th MAY, 2023

GURWINDER SINGH @ GOLDIPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.S. Maini, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 44, dated 07.12.2020, under Section 22 of NDPS Act, 1985, registered at Police Station Panjtoor, District Moga.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and is in custody since 07.12.2020.

3. On the other hand, learned State counsel has produced the custody certificate, which is taken on record. According to which, the petitioner has suffered incarceration for a period of 2 years 5 months, which further depicts that he is involved in two other cases. He opposes the prayer made in the present petition stating that the recovery from the petitioner is of 1250 tablets of tramadol, which falls under commercial quantity and attracts the bar of Section 37 of NDPS Act.

4. Having heard learned counsel for the parties.

5. The relevant extract of the judgment of the Apex Court rendered in ***Mohd. Muslim alias Hussain's*** case (supra) reads as under:-

“In a recent decision, while considering bail under the Unlawful Activities Act (Prevention) Act, 1967, this court in Union of India Vs. K.A. Najeeb observed that:

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252], Babba V. State of Maharashtra, (2005)11 SCC 569 and Umarmia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of bars conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

15. The court concluded that statutory restrictions like Section 43-D (5) of the UAPA, cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights.

17. In the most recent decision, Satender Kumar Antil V. Central Bureau of Investigation prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect of several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would

apply to these categories also. To make it clear, the provision contained in Section 436-A of the code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails ([Sections 436, 437 and 439, CrPC](#)) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under [Special Acts \(NDPS Act, etc.\)](#), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of

overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

20. 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.

21. 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 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.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in [A Convict Prisoner v. State²¹](#) as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

24. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional

the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

25. For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs.”

6. After having heard learned counsel for the respective parties and perusal of the record, it is evident that the petitioner has already faced custody as undertrial for more than 2 years till now and the provisions of Section 37 of NDPS Act, 1985 though exclude grant of bail altogether but it further envisaged that the Court should be satisfied that the accused is not guilty and would not commit any offence. If, a literal interpretation is given it amounts to a punitive detention and unsanctioned preventive detention and the harmonious intent of the Legislation is to be borne in mind, which by no stretch of imagination can be to punish an accused till the guilt is not proved for an unlimited period. In such scenario it is to be looked only *prima-facie* on the basis of material before the court as to whether injustice is rack on the individual by keeping him behind bars for unlimited duration to wait tiresome long period consume for conduct of

trial in reaching to a logical conclusion with regard to the guilt of petitioner.

7. It can also be not lost sight by this Court that liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial as has been held by the Apex Court in the case of **Union of India vs. K.A. Najeed; (2021) 3 SCC 713.**

8. Accordingly, in the light of discussions made hereinabove, and the judicial pronouncements in **Mohd. Muslim alias Hussain's** case (supra) and **K.A. Najeed's** case (supra), I am of the firm view that the instant petition deserves to be allowed.

9. Hence, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

10. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

11th MAY, 2023
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>