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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.35267 of 2023 in/ and
CRM-M No.23467 of 2023 (O&M)
Date of Decision: 31.08.2023

Ramesh Kumar Petitioner
V/s.
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gagandeep Sanwal, Advocate for
Mr. Neeraj Sansaniwal, Advocate
for the applicant-petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J (Oral)

CRM No.35267 of 2023

1. This is an application filed under Section 482 Cr.P.C. seeking permission for placing on record the copy of zimni orders as at Annexure P-11 (collectively).
2. For the reasons stated in the application, the same is allowed and the said Annexure is taken on record.
3. The application stands allowed.

Main Case

4. The present is a third petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.88 dated 20.02.2021, under Sections 29, 61, 85 of Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985 registered at Police Station Narnaund, District Hisar.

5. It has been submitted by learned counsel for the petitioner that it is the third bail petition for grant of regular bail since earlier when he filed first petition for grant of bail, it was dismissed on merits vide order dated 19.01.2022 (Annexure P8) and further submitted that now in the changed circumstances, the present bail petition has been filed. He further submitted that the petitioner is in custody since 22.02.2021 which is more than two and a half years. He has submitted that the charges in the present case were framed on 26.09.2022 which is almost more than 11 months ago and till date not even a single prosecution witness has been examined and to this effect, he has referred to zimni orders tagged alongwith the afore-mentioned application as Annexure P-11. He submitted that after the framing of the charges, the prosecution witnesses were summoned for 04 times but every time none of the PWs were present in the Court for deposition. Learned counsel further submitted that as per the allegations the police got an information and allegedly there was a recovery of 325 Kgs 800 grams of *ganja* from a *Kotha* which according to the prosecution belonged to the petitioner but in fact it belonged to one Kuldeep and not to the petitioner and thereafter allegedly on the disclosure statement made by the petitioner there was another recovery of 393 Kgs 300 grams of *ganja* from the fields. In this way, about 719 Kgs 100 grams of *ganja* was recovered from the petitioner. Learned counsel submitted that the petitioner is having no criminal background and is not involved in any other case. Earlier, when he filed regular bail petition, it was dismissed on merits in view of the fact that there was a huge recovery and the bar contained under Section 37 of the NDPS Act was applicable. He also submitted that so far as the other co-accused are concerned, they have already been granted bail by this Court vide Annexures P2 to P7.

6. Learned counsel further submitted that even if the allegations are pertaining to 719 Kgs 100 grams of *ganja* from the petitioner but now the custody of the petitioner has come out to be more than two and a half years and about 11 months have elapsed after framing of the charges and not even a single witness has been examined. He has also submitted that the reason as to why the PWs are not coming forth for deposition, it appears that the petitioner has been falsely implicated in the present case because of enmity in the village and the petitioner having no criminal background was implicated at the hands of the political opponent(s). He submitted that due to the fault of the prosecution for not caring to depose before the Court, he had to face incarceration for a period of more than two and a half years for no fault of his. Learned counsel for the petitioner has referred to judgments of Hon'ble Supreme Court in ***“Satender Kumar Antil Vs. Central Bureau of Investigation”, (2021) 10 SCC 773*** with regard to repeated adjournments in the light of Article 21 of the Constitution of India. He has also referred to the judgment of Hon'ble Supreme Court in ***“Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)” [2023 AIR (SC) 1648]*** wherein the Apex Court has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. He has also referred to the judgment of Hon'ble Apex Court in ***“Dheeraj Kumar Shukla Vs. State of UP” Special Leave to Appeal (Crl.) No.6690 of 2022*** in order to support his contentions. Learned counsel for the petitioner has further referred to the latest judgment of Hon'ble Supreme Court in ***“Rabi Prakash Vs. State of Odisha” Special Leave to Appeal (Crl.) No(s).4169 of 2023***, with regard to the issue of prolonged incarceration. While referring to aforesaid judgments, he submitted that in such like situations wherein the accused is having no criminal background and for no fault of the

petitioner in delay of the trial, especially, when no prosecution witness is examined, the bar of Section 37 of the NDPS Act is not applied in the light of Article 21 of the Constitution of India.

7. On the other hand, Mr. Naveen K. Sheoran, learned DAG, Haryana has stated that so far as the custody of the petitioner is concerned, it is correct that the petitioner is in custody for more than two and a half years. He further stated that it is also correct that he is not involved in any other case and that the charges were framed on 26.09.2022 but till date no prosecution witness has been examined and they were summoned on every adjourned date as per the interlocutory orders attached by the petitioner in the present case. He has further submitted that it is also correct that the other co-accused who although on the disclosure statement of the petitioner, have been extended the benefit of bail by this Court. Learned State counsel has however, opposed the grant of bail to the petitioner on the ground that the prayer of the petitioner for grant of bail is hit by the bar contained in Section 37 of the NDPS Act, since the quantity involved in the present case falls in the category of commercial quantity.

8. I have heard the learned counsel for parties.

9. It is a case where the petitioner has now faced the incarceration for more than two and a half years. Although his earlier bail petition was dismissed on merits but now with the long custody period of the petitioner, the present successive bail petition is maintainable because of changed circumstances of long custody period of the petitioner. Also, more than 11 months have elapsed after framing of the charges and till date no PW has been examined. During the course of arguments, on a specific query raised to learned Deputy Advocate General, Haryana as to what was the justification and as to why the prosecution witnesses

who have set the criminal law into motion, are not caring to depose before the Court despite the fact 04 times adjournment was granted by the trial Court and no prosecution witness was present and it is within the knowledge of the PWs who are the police officials and have set the criminal law into motion to which the learned State counsel could not give any reason or justification. The total custody of the petitioner has come out to be more than two and a half years as on today.

10. The Hon'ble Supreme Court in ***"Satender Kumar Antil Vs. Central Bureau of Investigation"***, (2021) 10 SCC 773 had considered the issue with regard to repeated adjournments in the light of Article 21 of the Constitution of India. 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".

11. Recently, the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [2023 AIR (SC) 1648]** wherein the Apex Court 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.”

12. Similarly, on the point of custody, the Hon'ble Supreme Court in **“Dheeraj Kumar Shukla Vs. State of UP” Special Leave to Appeal (Crl.)**

No.6690 of 2022 has opined 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.”

13. Further recently, the Hon’ble Supreme Court in **“Rabi Prakash Vs. State of Odisha” Special Leave to Appeal (Crl.) No(s).4169 of 2023** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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.”

14. The petitioner is having no criminal background as per the learned counsel for the parties and the petitioner has already faced incarceration of more than two and a half years and more than 11 months have elapsed after the framing of the charges but no single witness has been examined so far. Also, there was no justification on the part of the learned State counsel as to why the prosecution witnesses did not depose even after 11 months of framing of charges.

15. In view of the aforesaid totality of facts and circumstances, considering the custody period of the petitioner, this Court is of the view that bar contained under Section 37 of the NDPS Act will not apply to the present petitioner and in the light of Article 21 of the Constitution of India and this Court deems it fit and proper to grant regular bail to the petitioner.

16. 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, if not required in any other case.

17. 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 petition only.

18. Since the main petition has been allowed, all the pending application(s) also stand(s) disposed of.

31st August, 2023

Sonia Puri

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No