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

CRM-M-25568-2023

Date of Decision: 27.07.2023

Haily @ Manpreet Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kanwar Inder Singh, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.11 dated 08.01.2016, under Section 21(C)/27-A/61/85 of the NDPS Act, registered at Police Station City Tohana, District Fatehabad.
2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for more than 3 years and 4 months. He submitted that initially he was arrested after the registration of FIR and remained in custody for about 1 year and thereafter, he remained absent from the proceedings and therefore, was declared Proclaimed Offender. He also submitted that the petitioner is an illiterate person and he remained as P.O. from 13.11.2017 till 09.03.2021 then he was arrested and thereafter, he is in custody for about 2 years and 4 months, and therefore, his total custody as of now is more than 3 years and 4 months. He further submitted that the remaining accused have been convicted and so far as the present petitioner is

concerned, his role was that he was sitting on rear seat of the car and there had been an alleged recovery of 50 bottles of Corex from the boot of the car. He also submitted that the petitioner being an illiterate person remained at his house being misinformed with regard to the appearance in the Court and his absence was *bona fide*. He further submitted that be that as it may the petitioner has already been arrested and has already faced total custody of more than 3 years and 4 months and now after his arrest, the charges were framed on 19.03.2021, which is more than 2 years and 4 months ago and since then, not even a single witness has been examined in the present case and the delay is not attributable to the petitioner but the same is attributable to the prosecution, who did not care to depose before the Court with the result that his incarceration has been perpetuated because of the fault of the prosecution. He further submitted that the mere fact that earlier the petitioner was declared P.O. would not disentitle him for grant of regular bail considering his long custody. He also submitted that the petitioner is not involved in any other case and has clean antecedents, therefore, he may be considered for the grant of regular bail.

3. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)", 2023 AIR(SC) 1648, *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "Rabi Prakash Vs. The State of Odisha" and *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" and contended that in view of the aforesaid factual position as well as the

judgments passed by the Hon'ble Supreme Court, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner and particularly in view of the fact that no recovery has been effected from the present petitioner.

4. On the other hand, Ms. Harpreet Kaur, learned AAG, Haryana, submitted that it is correct that the total custody of the petitioner is more than 3 years and 4 months and charges were framed on 19.03.2021 and till date no prosecution witness has been examined. She has however opposed the grant of bail to the petitioner on the ground that he was earlier declared P.O.

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

6. The Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)*** discussed this issue with regard to delay in trial and its effect on the Right to Life under Article 21 of the Constitution of India. Para No.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. Now recently, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the issue with regard to delay in trial and long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. The relevant paras 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 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. Further recently, the Hon'ble Supreme Court in ***Rabi Prakash's case (Supra)*** 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."

9. Similarly, the Hon'ble Supreme Court in ***Dheeraj Kumar Shukla's case (supra)*** 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.”

10. The plea taken by the learned State counsel that the petitioner was earlier declared Proclaimed Offender and thereafter, was arrested would not become a ground for denial of bail considering his long custody which is stated to be more than 3 years and 4 months in total and particularly in view of the fact that as per the learned counsels for the parties, the charges qua the petitioner were framed on 19.03.2021, which is more than 2 years and 4 months ago and till date not even a single witness has been examined.

11. Therefore, considering the aforesaid totality of circumstances of the present case and also considering the custody of the petitioner, this Court, therefore, deems it fit and proper to grant regular bail to the petitioner, especially in the light of Article 21 of the Constitution of India. 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.

27.07.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |