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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24500-2023
Date of decision: 09.10.2023

RATTAN KUMAR GARG

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. K. S. Brar, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.63 dated 27.08.2021, under Sections 22(B) and 29 of the NDPS Act, registered at Police Station S.G.N. Dev Thermal Plant, District Bathinda, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 2 years and 2 months and in the present case, charges were framed by the learned trial Court on 02.12.2021. He further submitted that in the present case, the allegations were that the police apprehended one co-accused, namely, Mandeep Singh from whom there was alleged recovery of 750 tablets of *Tramadol* and on the basis of his disclosure statement, the name of

other co-accused, namely, Rajesh Verma was nominated from whom there was recovery of 400 tablets of *Tramadol*. Thereafter, on the basis of disclosure statement of aforesaid Rajesh Verma, the name of the present petitioner was nominated. He further submitted that on the basis of disclosure statement of aforesaid Mandeep Singh, another co-accused, namely, Gagan Kumar was also nominated and on the basis of his disclosure statement, other co-accused, namely, Geeta Rao was nominated from whom huge recovery of *Tramadol* was allegedly effected. He further submitted so far as the present petitioner is concerned, his name was nominated on the basis of second disclosure statement and apart from the disclosure statement, there was no evidence available with the prosecution agencies to connect the petitioner with the present offence and it is a settled law that the disclosure statement of co-accused is not admissible in evidence and has referred to a judgment of Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (1) RCR (Criminal) 1**. He further submitted that thereafter as per the prosecution, there was alleged recovery of 10000 tablets of *Rolin-0.5*, 4800 tablets of *Tramadol Hydrochloride* and 500 tablets of *Trintek-SR* from the petitioner but the aforesaid tablets were planted upon the petitioner by the police itself. He also submitted that the petitioner has clean antecedents and he is not involved in any other case and his name has been nominated purely on the basis of second disclosure statement and there is no other material to connect the petitioner with the present offence.

3. He further submitted that the aforesaid three co-accused, namely, Mandeep Singh, Rajesh Verma and Geeta Rao had also filed bail petitions before this Court and this Court vide order dated 21.07.2023 had allowed the

bail petitions and extended the benefit of regular bail to all the aforesaid three co-accused. He further submitted that one of the grounds on the basis of which regular bail was granted to the aforesaid three co-accused was that the charges were framed on 02.12.2021 and even at that point of time, only one prosecution witness was examined and that too partly and no justification had come forth from the State as to why the prosecution witnesses were not coming forth for deposition before the Court with a result that the accused had to face long incarceration. He further submitted that this Court referred to judgments of Hon'ble Supreme Court in "Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR(SC) 1648, and Special Leave to Appeal (Criminal) No.4169 of 2023 titled as "Rabi Prakash versus The State of Odisha" and regular bail was granted to aforesaid three co-accused on the ground of custody and in view of the fact that long period had expired after the framing of the charges and the prosecution witnesses were not coming forth. He also submitted that so far as the present petitioner is concerned, he is at parity with the aforesaid three co-accused especially in respect of his facing of incarceration and the conduct of the police officials who despite the fact that now about one year and ten months have elapsed and only one witness has been examined, namely, Balwinder Singh. He further referred to various interlocutory orders passed by the learned trial Court after the framing of the charges and contended that the perusal of the aforesaid orders would show that not once but for number of times bailable warrants and non-bailable warrants have been issued to the prosecution witnesses, who were none other but those

police officers who had set the criminal law into motion and there was no justification coming forth as to why after lodging of the prosecution, they have not deposed before the Court despite the fact that repeatedailable warrants and non-ailable warrants were issued to them. Even the surety bonds were also forfeited and they were also bound down on many occasions but for large number of times they did not bother to step into the witness box with a result that the petitioner had to face long custody for no fault of his. He further submitted that the petitioner being at parity with the aforesaid three co-accused may be considered for grant of regular bail especially considering the fact that the petitioner has clean antecedents and he is not a habitual offender and he is not involved in any other case.

4. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that so far as the grant of regular bail to the aforesaid three co-accused is concerned, the same is correct and it is also correct that the petitioner is in custody for about 2 years and 2 months. He further submitted that the petitioner is not at parity with the aforesaid three co-accused because there was recovery of 10000 tablets of *Rolin-0.5*, 4800 tablets of *Tramadol Hydrochloride* and 500 tablets of *Trintek-SR* from the petitioner. So far as the antecedents of the petitioner is concerned, he submitted on instructions that it is correct that the petitioner is not involved in any other case. He further submitted that the bar contained under Section 37 of the NDPS Act will be applicable to the present petitioner.

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

6. The allegations against the petitioner were that there had been a recovery of 10000 tablets of *Rolin-0.5*, 4800 tablets of *Tramadol Hydrochloride* and 500 tablets of *Trintek-SR* from him. At the first instance, the police had arrested one co-accused, namely, Mandeep Singh on whose disclosure statement another co-accused, namely, Rajesh Verma was nominated. Thereafter, on the basis of disclosure statement of aforesaid Rajesh Verma, the name of the petitioner was nominated. It is true that the police at the time of investigation should rather investigate thoroughly to go into the details and to know the source but at the same time it is the duty of the police that after the presentation of challan and after framing of the charges to at least depose before the Court so that the trial itself does not get delayed. The alleged recovery from the petitioner and the other co-accused who have already been granted regular bail by this Court as aforesaid is undoubtedly high but those three co-accused were granted the concession of regular bail primarily because of the reason that their custody was prolonged only at the fault of the prosecution witnesses who are none other but the police officials who had set the criminal law into motion. The petitioner is stated to be having clean antecedents and not involved in any other case and learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and the aforesaid tablets have been planted upon him by the police itself.

7. At the time of arguments, this Court had put a specific query to the learned State counsel as to what was the justification as to why for such a long period after the framing of the charges i.e. one year and ten months, no prosecution witness has been examined except one witness, to which he could

not offer any justification. The learned trial Court after the framing of the charges for large number of times issuedailable warrants and non-bailable warrants against the police officials including the person who has now been examined after issuance of non-bailable warrants issued against him and similarly qua others also,ailable warrants and non-bailable warrants were issued but it is not understandable as to why for a large period of time they have not deposed before the Court and not even cared to come forward for deposition. The argument which have been raised by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case therefore cannot be ignored because of the conduct of the police officials. The aforesaid three co-accused have been granted regular bail by this Court primarily because of the aforesaid reason while relying upon the judgments of Hon'ble Supreme Court as aforesaid.

8. 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 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”.

9. Hon'ble Supreme Court in **Mohd. Muslim Hussain's case (supra)** has dealt with this issue with regard to delay in trial and long custody of the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.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.

10. Recently, 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 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.”

11. In view of the aforesaid peculiar facts and circumstances of the present case, this Court is of the view that the petitioner is also entitled for grant of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India.

12. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

13. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

09.10.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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