

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29822-2023 (O&M)

Date of Decision: 28.07.2023

Amandeep Singh @ Mannu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rishu Mahajan, Advocate, for the petitioner.

Mr. Vinod Ghai, Advocate General assisted by
Mr. Rajiv Verma, DAG, 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. 57 dated 30.04.2020, under Sections 21/29 of NDPS Act, registered at Police Station STF Border Range, Amritsar, District Amritsar.
2. Learned counsel for the petitioner has submitted that this is a second bail petition filed by the petitioner and earlier bail petition filed by the petitioner was dismissed on merits on 30.09.2021 on the ground that the allegations involved are serious in nature and having high magnitude and also in view of Section 37 of the NDPS Act. He submitted that the aforesaid bail petition was dismissed on 30.09.2021 and now it is almost 1 year and 10 months that till date no progress has taken place in the trial.

3. Learned counsel while referring to the allegations against the petitioner submitted that the petitioner was not named in the FIR but it was on the disclosure statement of the co-accused that he was nominated and therefore, the role attributable to the petitioner was that he had hidden some narcotic substance in his fields which are near the Pakistan border and it was on the disclosure statement of some other co-accused that the police discovered 6 kg. and 690 grams of heroin from the land. He submitted that it is a case where the petitioner is having clean antecedent and he has been falsely implicated in the present case.

4. Learned counsel specifically brought to the notice of this Court that the custody of the petitioner is 3 years and 2 months. Charges were framed by the learned trial Court on 22.12.2021 and now 1 year and 8 months have passed after the framing of the charges that not even a single witness has been examined in the present case. He referred to the interlocutory orders passed by the learned trial Court which has been placed on record in CRM-27704-2023 to contend that for 7 times bailable warrants were issued against the police officials including one DSP and two times non-bailable warrants were issued by the learned trial Court in order to secure their presence for the purpose of deposition. However, for the reasons best known to the prosecution witnesses, they did not care to depose before the Court. He submitted that criminal law is brought into motion by these police officials who are the prosecution witnesses but they did not care to depose before the Court even for 1 year and 8 months after the framing of the charges with a result that the petitioner who is having no criminal background had to face incarceration for 3 years and 2 months for

no fault of the petitioner and purely because of the fault of the prosecution witnesses who are the police officials. He submitted that in view of the aforesaid facts and circumstances, the present successive bail petition may be considered due to change of circumstances and the petitioner may be considered for the grant of regular bail. He has also 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. He 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. He also referred to a judgment of Supreme Court in ***Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)*** 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. Vinod Ghai, learned Advocate General, Punjab with Mr. Rajiv Verma, learned DAG, Punjab appeared on behalf of the State of Punjab. On 27.07.2023, this Court had requested the Advocate General, Punjab to assist this Court particularly in view of the fact

that no justification was coming forth as to why no prosecution witness has been examined for long period of 1 year and 8 months after the framing of the charges despiteailable and non-bailable warrants issued against them. He submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is having no criminal background and he is not involved in any other case. However, the learned Advocate General has submitted that the prosecution witnesses have not appeared despiteailable and non-bailable warrants issued to them which has caused difficulty is not only in the present case but in many other cases as well and for that purpose the State has already started taking corrective measures and has appointed Nodal Officers to supervise through SSP as to in how many cases the prosecution witnesses do not appear after the framing of the charges and for long period of time and what action is to be taken against them. He submitted that from time to time the data is being reviewed. He further submitted and assured this Court that further progress will be made in reviewing and taking corrective measures in this regard so that the prosecution witnesses do not evade the process of the Court and they depose before the Court in proper time.

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

7. It is a case where the petitioner has already faced incarceration for 3 years and 2 months and charges were framed on 22.12.2021 which is almost 1 year and 8 months. In the present case no justification has come forth as to why the prosecution witnesses did not appear before the Court despite for a number of timesailable warrants and non-bailable warrants were issued against them. Learned Advocate General, Punjab appearing in

this case has assured this Court that monitoring is being conducted in number of other cases as well, so that the prosecution witnesses who are the police officials, they do not evade the process of the Court and they depose before the Court well in time.

8. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue. 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 (Supra)*** has dealt with this issue. 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.

10. 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.”

11. 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.

12. In view of the above and considering the totality of facts and circumstances, this Court is of the view that the present successive bail petition filed by the petitioner is maintainable in view of peculiar facts and circumstances. Therefore, this Court is of the view that considering the long custody of the petitioner and the fact that after the framing of the charges on 22.12.2021 not even a single witness has been examined and the

petitioner is having no criminal background, the petitioner deserves the concession of regular in the light of Article 21 of the Constitution of India.

13. 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.

14. 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.

28.07.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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