

relations with Pakistani smugglers and on the basis of alleged recovery he has been arrested.

3. Learned counsel for the petitioner submitted that the petitioner is not involved in any other case and in fact it is a clear case of false implication and even the author of the FIR, namely, SI Kuldeep Singh is now himself involved in a drug case under the NDPS Act and he is behind the bars. He further submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for grant of regular bail.

4. On the other hand, learned State counsel, on instructions from ASI Gurnam Singh, who is present in the Court, has submitted that it is correct that the petitioner is in custody since 26.11.2020 which is almost 2 years and 5 months and challan was presented on 21.05.2021 and the charges were framed on 30.09.2021 and no prosecution witness has been examined till date. He submitted that as per the allegations there was recovery of 05 grams heroin from the petitioner but on his disclosure statement there was further recovery of 2 kg heroin and therefore, the prayer of the petitioner for grant of regular bail is hit by the bar contained under Section 37 of the NDPS Act.

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

6. The total custody of the petitioner as per the learned counsel for the petitioner is about 2 years and 5 months. Charges were framed 1 ½ years ago but no prosecution witness has been examined till date. The alleged recovery from the petitioner was only 05 grams heroin and thereafter on his disclosure statement there was an alleged recovery of 2kg grams of heroin. The petitioner has clean antecedents and is not involved in any other case.

7. The allegation levelled against the petitioner is that the petitioner is involved with Pakistani smugglers. However, a query was raised to the

learned State counsel as to whether there was any material available with the police to connect the petitioner by way of any telephonic communication or other means whatsoever to which he, on instructions, stated that on record there was no such material available but the same can be adduced at the time of evidence. However, 1 ½ years have elapsed after framing of charges but prosecution witnesses are yet to depose before the Court and no witness has been examined. The Hon'ble Supreme Court in **“Satender Kumar Antil Vs. Central Bureau of Investigation and another”, 2022(10) SCC 51** discussed the issue with regard to the effect of long custody and delayed trial and its effect on 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.”

8. Now recently in the judgment of Hon'ble Supreme Court in **“Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)”** the effect of long custody under Section 37 of the NDPS Act was also considered in para Nos.19 and 20 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.”

9. After considering the above facts and circumstances, this Court is of the view that the bar contained under Section 37 of NDPS Act will not apply in the present case, considering long custody of the petitioner and that no prosecution witness has been examined till date.

10. In view of the aforesaid facts and circumstances, this Court is of the view, that the petitioner deserves the concession of regular bail.

11. 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.

12. However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

28.04.2023
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(JASGURPREET SINGH PURI)
JUDGE

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