

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

**CRM-M-27116 of 2022
DATE OF DECISION :- 12.10.2023**

Satveer Jangu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.S. Gill, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

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. 322 dated 23.7.2020, under Sections 22 (C) of NDPS Act, registered at Police Station Rania, District Sirsa.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 23.7.2020 which is almost 3 years and 2½ months. It is also submitted that charges were framed on 23.3.2021 which is almost 2½ years and till date only 2 prosecution witnesses have been examined. He further submitted that it is a case where the allegations are that the petitioner was a pillion rider of the motorcycle and the other co-accused Iqbal Singh was the driver of the motorcycle and the police apprehended them along with five thousand tablets of Tramadol. He also submitted that

the recovered quantity falls in the category of commercial quantity but the bar of Section 37 of the NDPS does not apply in the present case in view of the circumstances in the present case. He further submitted that the other accused has been admitted to regular bail by a coordinate Bench of this Court in CRM-M-20246 of 2022 on 18.4.2023 and so far as the present petitioner is concerned he is not involved in any other case under the NDPS Act. He further submits that after the charges were framed the learned trial Court had summoned the prosecution witnesses who were none other than the police officials and even for two times bailable warrants were issued and despite the fact that bailable warrants were issued and executed the aforesaid witnesses did not bother to come and thereafter now as upto date only two witnesses have been examined. He submitted that the net result of the same was that the petitioner had to face long incarceration of 3 years and 2½ months for no fault of the petitioner. Learned counsel for the petitioner submitted that not only the petitioner is at parity with another co-accused Iqbal Singh but he is also entitled for the grant of regular bail in view of the judgments of the Hon'ble Supreme Court and has relied upon the judgments 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], *“Dheeraj Kumar Shukla versus The State of Uttar Pradesh”* 2023 SCC online SC-918 and also a recent judgment of Supreme Court in *“Rabi Prakash Versus State of Odisha”, Special Leave to Appeal (Crl.) No.4169 of 2023.*

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that since the petitioner is in custody for more than 3 years and 2½ months and only two witnesses have been examined despite the fact

that the charges were framed about 2½ years ago i.e. on 23.3.2021. So far as the antecedents of the petitioner is concerned he submitted that the petitioner is not involved in any other case under the NDPS Act but he is involved in one case under Sections 452, 323, 382 and 503 IPC. However, he has opposed the grant of bail to the petitioner on the ground that the quantity recovered in the present case falls under the category of commercial quantity, and, therefore, is hit by the bar contained under Section 37 of the NDPS Act. So far as the parity of the petitioner with the other co-accused Iqbal Singh is concerned, he has not disputed the same.

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

5. It is a case where the petitioner has already faced incarceration for about 3 years and 2 ½ months. Surprisingly after the framing of charges i.e. on 23.3.2021 which is almost 2 ½ years, only two witnesses have been examined despite the fact that twice bailable warrants were issued against the police officials who were none other but the police officials who had set the criminal law into motion.

6. On a specific question put to the learned State counsel as to what was the justification with regard to non-deposition of the prosecution witnesses in the present case, to which he could not give the justification.

7. Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)* has discussed this issue of repeated adjournments and the scope of Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“49. 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. Recently also the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** 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."

9. 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."

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. After hearing learned counsel for the parties, this Court is of the considered view that the petitioner is not only at the parity with other co-accused namely Iqbal Singh who has been extended the benefit of bail by a Coordinate Bench of this Court but the petitioner is also entitled for grant of regular bail on the ground of long custody.

12. Considering the aforesaid facts and circumstances and the long custody of the petitioner the bar under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of 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, if not required in any other case.

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.

(JASGURPREET SINGH PURI)
JUDGE

12.10.2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No