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

**CRM-M-26112-2023
Date of Decision: 12.07.2023**

Sanjay Chawla @ Sanju

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Randeep Singh Waraich (Rana), Advocate,
for the petitioner.

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 grant of regular bail to the petitioner in case bearing FIR No.62 dated 12.05.2021, under Sections 21/61/85 of the NDPS Act, 1985, registered at Police Station Special Task Force Wing, Police Commissionerate, SAS Nagar, District SAS Nagar.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody from about 2 years and 2 months and the charges in the present case were framed by the learned trial Court on 22.04.2022 which is more than 1 year and 2 months ago but till date only one prosecution witness, namely, SI Gurcharan Singh has been examined. He further submitted that the petitioner has been falsely implicated in the present case due to previous enmity and that was the reason as to why for a long time after the framing of the charges, the prosecution witnesses have

not turned up for deposition with the result that the petitioner had to face incarceration for about 2 years and 2 months for no fault of his.

3. During the course of arguments, the learned counsel for the petitioner supplied the photocopy of the zimni orders which were passed by the learned trial Court after the framing of the charges. While referring to the aforesaid zimni orders, he submitted that constantly and repeatedly the learned trial Court had been issuingailable warrants against the prosecution, who were none other than those police officials, who had set the criminal law into motion and they even did not care to depose before the Court and even the aforesaid prosecution witness, who has been examined, was also forced to appear before the Court with issuance ofailable warrants against him. He also submitted that the petitioner is not involved in any other case under the NDPS Act and the allegations against the petitioner were with regard to the recovery of 409 grams of *Heroin*. He further submitted that the plea taken by the petitioner that he has been falsely implicated, is fortified and substantiated from the conduct of the police officials as aforesaid, and therefore, the petitioner may be considered for grant of regular bail. He also submitted that it was not the fault of the petitioner that he had to face incarceration for about 2 years and 2 months but it was a pure and clear fault of the prosecution witnesses, as is apparent from the zimni orders, which have been produced in the Court today.

4. 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, where the Hon'ble Supreme Court has discussed this issue with regard to repeated

adjournments and its effect upon the Right to Life under Article 21 of the Constitution of India. He also referred to a latest judgment of the Hon'ble Supreme Court passed in "*Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*", *2023 AIR(SC) 1648*, to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

5. On the other hand, Mr. Rajiv Verma, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for more than 2 years and 2 months and the charges in the present case were framed on 22.04.2022 which is more than 1 year and 2 months ago and till date only one witness, namely, SI Gurcharan Singh has been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner is 409 grams of *Heroin* which falls in the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the other cases against the petitioner are 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 the Cow Slaughter Act.

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

7. It is a case where the petitioner has faced incarceration for about than 2 years and 2 months. The allegations against the petitioner were pertaining to recovery of 409 grams of *Heroin*. Since the aforesaid quantity falls in the category of commercial quantity, this Court would, therefore, consider the effect of Section 37 of the NDPS Act on the plea raised by the

learned counsel for the petitioner for grant of regular bail. The petitioner is stated to be not involved in any other case except the one case under the Cow Slaughter Act. As per the learned counsel for the parties, the charges were framed by the learned trial Court on 22.04.2022, which is more than 1 year and 2 months ago and till date only one prosecution witness, namely, SI Gurcharan Singh has been examined and that too when the learned trial Court was constrained to repeatedly issue bailable warrants against the aforesaid prosecution witness. With regard to the remaining prosecution witnesses, who are also the police officials, the learned trial Court had been issuing repeated bailable warrants but they did not care to depose before the Court.

8. During the course of arguments, this Court had raised a specific query to the learned State counsel that as to what was the justification as to why in the present case the prosecution witnesses, who are the police officials and who themselves set the criminal law into motion have not cared to depose before the Court despite bailable warrants repeatedly issued against them to which he after taking instructions from the S.I. Makhan Ram, who is present in Court today, could not offer any justification or explanation in this regard.

9. 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.”

10. Now recently, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the issue with regard to delay in trial and the 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 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 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."

11. The facts and circumstances of the present case suggest that the charges were framed more than 1 year and 2 months ago but only one prosecution witness has been examined. The learned trial Court had issued repeated bailable warrants against the prosecution witnesses, who were none

other than those police officials, who had set the criminal law into motion. Therefore, the delay in trial is not attributable to the petitioner. Consequently, this Court is of the view that rigor of Section 37 of the NDPS Act will not apply in the present case in the light of Article 21 of the Constitution of India. Apart from the above, it is not the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on regular bail then he may repeat the offence or may abscond or flee from justice or he may influence the witnesses.

12. Therefore, considering the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner. 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.

13. 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.

12.07.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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