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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26428-2023 (O&M)
Date of decision: 16.11.2023

Satnam Singh @ Satta

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. K.S. Ahhi, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. 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.222 dated 14.08.2020, under Sections 22, 25 and 29 of the NDPS Act, registered at Police Station A Division, District Amritsar.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody from 17.08.2020 and total custody of the petitioner is now comes out to 03 years, 02 months and 26 days, as per custody certificate filed by the State in the Court today. Learned counsel submits that it is a case, where the allegations are that the police had apprehended the other co-accused including one Sarwan Singh on the basis of information and from him, there

was an alleged recovery of 66000 tablets of Tramadol, which is huge quantity and falls in the category of commercial quantity under the NDPS Act, but the rigor of Section 37 of the NDPS Act will not be applicable to the petitioner due to the reasons explained by him. He submitted that the present FIR was lodged on 14.08.2020 on the ground that there had been recovery of aforesaid tablets from the co-accused, whereas at that time, the petitioner was in custody in some other case under the NDPS Act and qua him, there were allegations pertaining to Section 29 of the NDPS Act that the aforesaid co-accused was to supply some tablets to the petitioner, on the basis of some Whatsapp communication. He has submitted that so far as the present petitioner is concerned, he is nominated on the disclosure statement of the aforesaid co-accused and there is no evidence available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused, which even otherwise *per se* not admissible evidence, in view of the judgment of Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021(4) SCC 1*. He further submitted that after the matter was investigated, the police presented the challan qua the petitioner and till date, even the charges have not been framed, but the petitioner has already faced incarceration for the last 03 years, 2 months and 26 days. He submitted that it is only because the petitioner was earlier involved in two more cases and he was in custody, when the aforesaid FIR was lodged, but in fact, in both the aforesaid cases, the petitioner has been acquitted because he was falsely implicated. He further submitted that other co-accused namely Sarwan Singh and one more co-accused have

absconded and they have also been declared proclaimed offenders, but net result of the same is that till date, even charges have not been framed and the petitioner is facing incarceration for past 03 years, 2 months and 26 days. He submitted that in view of the aforesaid facts and circumstances, bar under Section 37 of the NDPS Act will not apply to the petitioner and refers to judgments of the Hon'ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and another*, 2022 (10) SCC 51, *Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*, 2023 AIR (SC) 1648, *Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh*, 2023 SCC Online SC 918, *Rabi Prakash Vs. The State of Odisha, Special Leave to Appeal (Criminal) No.4169 of 2023* and a latest judgment of Hon'ble Supreme Court in *Manish Sisodia versus Central Bureau of Investigation*, arising out of *Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023* in this regard.

3. On the other hand, Mr. Ramdeep Partap Singh, Sr. DAG, Punjab, on instruction from ASI Palwinder Singh, who is present in the Court, has not denied custody of the petitioner i.e 03 years, 2 months and 26 days, as per the custody certificate submitted in the Court today. He submitted that in the present case, even the charges have not been framed. He also stated that there is no recovery from the present petitioner in the present case, but the allegations are that the petitioner was supposed to get the tablets from the other co-accused on the basis of telephonic conversation through Whatsapp. He also submitted that as per the custody certificate, the petitioner was facing two cases under the NDPS Act and in both the cases, he has since been acquitted. He has, however,

submitted that since the quantity involved in the present case falls in the category of commercial quantity, prayer of the petitioner is hit by bar under Section 37 of the NDPS Act.

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

5. It is a case where at the time when the FIR was lodged, the petitioner was already in custody in some other case under the NDPS Act, in which he has since been acquitted. The allegation against the petitioner was under Section 29 of the NDPS Act and there is no recovery from the present petitioner. He was nominated on the basis of disclosure statement of co-accused, who has since been declared proclaimed offender as per the learned counsel for the parties. Be that as it may, total custody of the petitioner comes out to be 03 years, 02 months and 26 days and as per learned counsel for the parties, even charges have not been framed in this case probably because the other co-accused are at large. Therefore, this Court would certainly consider the aforesaid long custody and stage of the trial in the light of Article 21 of the Constitution of India.

6. 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 No.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”.

7. Thereafter, Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** has dealt with the 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 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 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”

8. 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.”

9. 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.”

10. Recently, Hon'ble Supreme Court in ***Manish Sisodia's case***

(*supra*), while dealing with custody and right of bail, has observed as under:-

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

11. In view of aforesaid facts and circumstances, where total custody of the petitioner is 03 years, 02 months and 26 days and even charges have not been framed, this Court is of the view that bar under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of Constitution of

India and also in the light of the aforesaid judgments.

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

13. 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.

14. 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.

[JASGURPREET SINGH PURI]
JUDGE

16.11.2023
rajeev/vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No