

CRM-M-31096-2021 (O&M);
CRM-M-15459-2023 (O&M);
CRM-M-33898-2023 (O&M) and
CRM-M-37441-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31096-2021 (O&M)
Date of Decision: 18.10.2023

(I)
Shaurab

....Petitioner(s)

Versus

State of U.T, Chandigarh

.....Respondent(s)

CRM-M-15459-2023 (O&M)

(II)
Neetu

....Petitioner(s)

Versus

Union of India

.....Respondent(s)

CRM-M-33898-2023 (O&M)

(III)
Satram Lal

....Petitioner(s)

Versus

Union of India

.....Respondent(s)

CRM-M-37441-2023 (O&M)

(III)
Santosh Kumar @ Pappu

....Petitioner(s)

Versus

CRM-M-31096-2021 (O&M);
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Union of India

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Hooda, Advocate,
for the petitioner in CRM-M-31096-2021.

Mr. Ankit Chahal, Advocate,
for the petitioner in CRM-M-15459-2023.

Mr. G.S. Salana, Advocate,
for the petitioner in CRM-M-33898-2023.

Mr. Parminder Walia, Advocate,
for the petitioner in CRM-M-37441-2023.

Mr. Rajiv Sharma, APP and
Mr. Gautam Kaile, Advocate,
for the respondent in CRM-M-31096-2021.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel,
for the respondent-UI in CRM-M-15459-2023 and
CRM-M-33898-2023.

Ms. Puneeta Sethi, Senior Panel Counsel,
for the respondent-UI in CRM-M-37441-2023.

JASGURPREET SINGH PURI, J. (Oral)

1. All the four petitions are taken up together for final disposal with the consent of learned counsels for the parties since all the four petitions arise out of the same complaint which has been lodged by the NCB who is the complainant and the prayer in all the four cases is for the grant of regular bail.

2. All the four petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners in

NCB Crime No. 51 dated 06.10.2020, under Sections 8, 20, 25, 27A, 28, 29 and 60 of NDPS Act, registered at Police Station NCB, Zonal Unit, Chandigarh.

3. The allegations in the present case were that NCB on receiving a secret information had laid a naka and had intercepted a car and the occupants of the car were three persons namely, Neetu, Santosh Kumar and one lady namely, Bimlesh. So far as the aforesaid lady Bimlesh is concerned, she was later on exonerated by the police. From the car there had been alleged recovery of 4.45 kgs. of Charas and thereafter on the basis of the disclosure statements of the co-accused, the names of the other two petitioners namely, Shaurab and Satram Lal were nominated. Thereafter, the trial of the case commenced and the charges were framed in the present case on 12.11.2021.

4. Learned counsel appearing on behalf of the petitioners Neetu and Santosh Kumar @ Pappu have submitted that they are in custody for last 3 years and both the petitioners are having clean antecedents and are not involved in any other case. So far as the petitioners namely, Shaurab and Satram Lal are concerned, learned counsel appearing on behalf of petitioner Shaurab submitted that the petitioner was arrested in some other case on 21.01.2021 and was nominated in this case on the basis of disclosure statement of a co-accused and thereafter arrested on 24.03.2021 in this case and his total custody comes to 2 years and 10 months and so far as the petitioner Satram Lal is concerned, he is in custody for the last 2 years and 6 months and he is also involved in one more case under the NDPS Act. Both

the learned counsels appearing on behalf of the petitioners Shaurab and Satram Lal have submitted that at the time when the present FIR was registered, the petitioners were already in custody in the aforesaid other case.

5. All the learned counsels for the petitioners have further submitted that after the framing of the charges on 12.11.2021, the trial has not proceeded properly and almost 1 year and 11 months have elapsed after the framing of the charges but only one witness has been examined fully and one witness has been examined partly and the witness who has been examined fully is the officer who was called on the spot being a Gazetted Officer and the officer who has been examined partly is the I.O of the case who was deposed in examination-in-chief on 15.09.2022 and the matter was adjourned by the learned trial Court because the defence counsel had taken time as he was not well and thereafter one more opportunity was also granted but thereafter the aforesaid officer did not appear before the Court despite the fact that repeatedly summons were issued to him so that he may come for cross-examination but he did not choose to come for the reasons best known to the aforesaid officer and even the learned trial Court was constrained to issue bailable warrants against the aforesaid officer who was partly examined wayback in September, 2022. Learned counsels also referred to para no.6 of the complaint whereby it has been so stated that there was a NCB team consisting of number of officers and they had put a naka and none of the aforesaid persons except for one aforesaid I.O namely, Kuldeep has been examined that too partly but there is no

justification as to why the other persons who were also present there and were material witnesses have not been examined for the reasons best known to them. They have submitted that the trial has been delayed at the behest of the prosecution witnesses who are none other but the police officers and it was rather the duty of those police officers to have deposed before the Court in accordance with law but there is no justification for not deposing before the Court well in time and the net result of the same was that the petitioners namely, Neetu and Santosh Kumar @ Pappu had to face incarceration for 3 years and the petitioner namely, Shaurab had to face incarceration for 2 years and 10 months and petitioner namely Satram Lal had to face incarceration for 2 years and 6 months. They further submitted that even otherwise also the subject matter of the alleged confiscation was only 4.45 kgs. of Charas and in fact they have been falsely implicated in the present case.

6. Learned counsels further 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. They 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. They referred to another

judgment of Supreme Court in *Dheeraj Kumar Shukla v. 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* to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

7. On the other hand, Mr. Rajiv Sharma, Additional Public Prosecutor appearing on behalf of respondent-NCB in CRM-M-31096-2021, Ms. Gurmeet Kaur Gill, Senior Panel Counsel appearing on behalf of respondent-NCB in CRM-M-15459-2023 and CRM-M-33898-2023 and Ms. Puneeta Sethi, Senior Panel Counsel appearing on behalf of respondent-NCB in CRM-M-37441-2023 have submitted that so far as the custody of the aforesaid petitioners is concerned, the same is not in dispute and it is also not in dispute that after the framing of the charges on 12.11.2021, only one witness has been examined fully and one witness has been examined partly. They have however opposed the grant of regular bail to the petitioners on the ground that the confiscated quantity falls in the category of commercial quantity and therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act. So far as the antecedents of all the four petitioners as so stated by the learned counsels for the petitioners above are concerned, all the learned counsels for the NCB have not disputed the same.

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

8. In the present case as per the allegations the NCB had secret information and at naka they had apprehended three persons namely, Neetu,

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Santosh Kumar and one other lady namely, Bimlesh but during the course of investigation the aforesaid Bimlesh was exonerated. The petitioners namely, Neetu and Santosh Kumar @ Pappu are stated to be in custody for 3 years and the petitioners namely, [Shaurab and Satram Lal](#) who are nominated on the basis of disclosure statement of the co-accused are in custody for about 2 ½ years. The charges in the present case were framed on 12.11.2021 but as per the learned counsels for the parties only one witness has been examined in full and one witness has been examined partly. A perusal of the interlocutory orders which have been passed by the learned trial Court would show that after the framing of the charges the trial Court had adjourned the case for about 13 times and one of the witnesses who was the I.O was partly examined wayback on 15.09.2022 and till date he has not been fully examined. A perusal of the orders would also show that after the matter was deferred because the defence counsel was not feeling well, it was again adjourned because of the same reason but thereafter he did not choose to appear before the Court for subjecting himself for cross-examination and rather the learned trial Court was constrained to pass bailable warrants against the prosecution witnesses including the person who was partly examined earlier about 1 year ago. There were number of officers of the NCB as so described in para no.6 of the complaint who were there at the naka but they have not been examined by the prosecution till date except for one I.O who has been examined partly despite the fact that about 1 year and 11 months have elapsed after the framing of the charges and despite bailable warrants being issued to them, they have not chosen to

depose before the Court. The net result of the same was that the petitioners namely, Neetu and Santosh Kumar @ Pappu had to face incarceration for 3 years and the petitioner namely, Shaurab had to face incarceration for 2 years and 10 months and petitioner namely Satram Lal had to face incarceration for 2 years and 6 months

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

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”.

10. 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.

11. 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.”

12. 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.

13. In view of the aforesaid facts and circumstances of the present case and considering the long custody of the petitioners and the stage of the trial and the fact that about 1 year and 11 months have elapsed after the

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framing of the charges only one witness has been examined fully and one witness has been examined partly, this Court is of the considered view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioners in the light of the aforesaid judgments of the Hon'ble Supreme Court and also in the light of Article 21 of the Constitution.

14. Consequently all the four petitions are allowed. All the four petitioners 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.

15. 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 petitions only.

18.10.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No