

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28503-2023 (O&M)

Date of Decision: 29.08.2023

Uppender

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Singh Jattan, Advocate, for the petitioner.

Ms. Harpreet Kaur, AAG, 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. 450 dated 17.07.2021, under Section 20 of NDPS Act, registered at Police Station Samalkha, District Panipat.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 17.07.2021 and thereafter, he was granted interim bail by this Court in view of the fact that the FSL report was not yet received and considering the judgment of a Division Bench of this Court in *Inderjeet Singh @ Laddi and others Vs. State of Punjab, 2014(3) RCR (Criminal) 953* and after the receipt of the FSL report, he surrendered before the police and now his total custody after excluding the total period of interim bail granted to him is about 1 year and 10 months. He submitted that it is case where the petitioner is having no criminal background and is

not involved in any other case and the allegations against the petitioner were that the police got an information that two persons were coming in a car and they were having some intoxicant substance. The petitioner was named in the FIR and as per the allegations, he was sitting on the conductor side and the other co-accused was driving the car and thereafter, there had been alleged recovery of 55 kgs of ganja which is almost 2 ½ times of the commercial quantity as prescribed under the NDPS Act. He submitted that the petitioner was falsely implicated in the present case and even otherwise also he was only a passenger and there was no recovery from the conscious possession of the petitioner. He further submitted that be that as it may, the charges in the present case were framed on 16.05.2022 which is almost 1 year and 3 months but no material witness has been examined by the prosecution. He submitted that only one witness, namely, ASI Mukesh Kumar has been examined and he was only a formal witness because he had deposited the packets of the confiscated quantity in the Forensic Laboratory. He submitted that there is no justification coming forth as to why for 1 year and 3 months after the framing of the charges no material witness has been examined and it is rather the duty of the police officials who have set the criminal law into motion to have depose before the Court and the custody of the petitioner has been perpetuated not because of the fault of the petitioner but because of the fault of the prosecution. He further submitted that even otherwise also when the petitioner was on interim bail, he has not violated any of the conditions of the bail and he has surrendered in time and therefore, the petitioner may be considered for the grant of regular bail. He has also submitted that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in view of the fact that there was no

recovery from the person of the petitioner and the conduct of the prosecution witnesses would show that the case was falsely planted upon the petitioner.

3. The learned counsel also 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 affected. He 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. He also referred to a judgment of Supreme Court in *Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* 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.

4. On the other hand, Ms. Harpreet Kaur, AAG, Haryana has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not a habitual offender and is not involved in any other case. She has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner and the other co-accused 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.

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

6. It is a case where the petitioner has already faced incarceration for 1 year and 10 months after excluding the total period of interim bail which was granted by this Court. As per the learned counsel for the parties while on interim bail, he did not violate any of the conditions of the bail order. The petitioner is stated to be not involved in any other case as per the learned counsel for the parties. Since the alleged recovery from the petitioner and the other co-accused from a car which involves commercial quantity is concerned, this Court would therefore consider the bail petition of the petitioner in the light of Section 37 of the NDPS Act. The charges in the present case were framed on 16.05.2022 and it is almost 1 year and 3 months but the prosecution witnesses have not been examined. Only one formal witness who had deposited the contraband in the Laboratory has been examined whereas repeatedly the trial Court had summoned the prosecution witnesses who are none others but the police officials who had set the criminal law into motion. During the course of arguments a specific query was raised to the learned State counsel as to what was the justification as to why these prosecution witnesses who are the police officials have not cared to depose before the trial Court after they themselves set the criminal law into motion and it is almost 1 year and 3 months have elapsed after the framing of the charges to which he could not give any explanation.

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

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. 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.

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 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.

11. In view of the aforesaid facts and circumstances, this Court has no option but to draw an adverse inference against the prosecution for the purpose of considering the effect of Section 37 of the NDPS Act. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of the aforesaid judgments of the Hon'ble Supreme Court and in the light of Article 21 of the Constitution of India.

12. 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.

13. 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.

29.08.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No