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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29561-2023 (O&M)
Date of Decision: 14.12.2023

(I)
Sarbjit Kaur @ Babli

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-43800-2023 (O&M)

(II)
Gurpreet Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner in CRM-M-29561-2023.

Mr. Amandeep Chhabra, Advocate,
for the petitioner in CRM-M-43800-2023.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of

regular bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 84 dated 12.06.2021, under Section 22(c) of NDPS Act, registered at Police Station Nathana, District Bathinda, Punjab.

3. Both the learned counsel for the petitioners have submitted that both the petitioners, namely, Gurpreet Singh and Sarbjit Kaur @ Babli are in custody from 12.06.2021 and their custody is now 2 years, 5 months and 20 days. They have submitted that both the petitioners have clean antecedents and are not involved in any other case except the petitioner Sarbjit Kaur @ Babli who is involved in one case under Section 323 IPC but they are not involved in any other case under the NDPS Act. They also submitted that it is a case of false implication in view of the fact that in the present case the allegation was that the police on checking of the suspicious elements had apprehended the petitioners who were on a motorcycle and on seeing the police party the motorcycle slipped and the intoxicant tablets they got scattered and there was an alleged recovery of 3500 tablets of Celcidol-100 SR and 1800 tablets of Alprasaft-0.5 which falls in the category of commercial quantity under the NDPS Act.

4. Learned counsels also submitted that the bar of Section 37 of the NDPS Act will not apply in the present case to the present petitioners in view of the peculiar facts and circumstances. They submitted that the charges in the present case were framed on 30.05.2022 which is almost 1 year and 7 months. They have also produced photocopies of the zimni orders passed by the learned Judge, Special Court, Bathinda in the Court today. The

aforesaid photocopies are hereby taken on record as Mark-X. While referring to the aforesaid orders, they submitted that the learned trial Court had adjourned the case for more than 17 times and repeatedly the prosecution witnesses were summoned but they did not care to depose before the Court and the trial Court was also constrained to issue bailable warrants against the prosecution witnesses twice. However, only one witness namely, Raman Kumar was examined later on but the aforesaid witness Raman Kumar was not even a material witness and he was only a person who had deposited the samples in the Forensic Laboratory and was only a formal witness. There was one more prosecution witness by the name of Makhan Singh who was also a formal witness and a sample carrier but was also not a material witness. They submitted that since it was a case which was planted upon the petitioners, the prosecution witnesses, who were the part of the police party and who had set the criminal law into motion are not deliberately coming forward for deposing before the Court with the result that the petitioners had to face incarceration for more than 2 years and 5 months. They also referred to the judgments of the Hon'ble Supreme Court 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 v. The State of Uttar Pradesh*, 2023 SCC Online SC 918 and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* in this regard.

5. On the other hand, Mr. Gurdarshan Singh Sidhu, learned AAG, Punjab has submitted that so far as the period of custody of both the petitioners is concerned, it is correct that both the petitioners are in custody for 2 years, 5 months and 20 days and after the framing of the charges on 30.05.2022 only one prosecution witness has been examined. He also submitted that the aforesaid prosecution witness namely, Raman Kumar who has been examined is only a person who had deposited the samples in Forensic Laboratory. So far as the antecedents of both the petitioners is concerned, he also submitted that both the petitioners are not involved in any other case except one petitioner, namely, Sarbjit Kaur @ Babli who is involved in one case under Section 323 IPC. He has 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.

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

7. It is a case where both the petitioners have already faced incarceration for 2 years, 5 months and 20 days. Although the recovered quantity falls in the category of commercial quantity but the submissions made by the learned counsels for the petitioners pertaining to the applicability of Section 37 of the NDPS Act has to be considered.

8. The 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”.

9. 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.

10. 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.”

11. 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.

12. The facts and circumstances of the present case suggest that the custody of both the petitioners comes out to be 2 years, 5 months and 28 days and about 1 year and 7 months have elapsed after the framing of the charges on 30.05.2022 only one prosecution witness has been examined and he is also a formal witness. None of the material witnesses who are the part of the police party or recovery witnesses etc. have been examined. A perusal of the zimni orders as so produced by the learned counsel for the petitioners during the course of arguments would show that repeatedly summons were issued to the prosecution witnesses and even twice bailable warrants were also issued. During the course of arguments, a query was raised to the learned State counsel as to what was the justification as to why the prosecution witnesses who had set the criminal law into motion did not care to depose before the trial Court despite the passage of long time of 1

year and 7 months and repeated summons issued to them to which he could not offer any explanation.

13. This Court is of the view that considering the aforesaid facts and circumstances and the long custody of the petitioners, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the light of Article 21 of the Constitution of India and also the judgments of the Hon'ble Supreme Court as aforesaid.

14. Consequently, both the petitions are allowed. Both the 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.

14.12.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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