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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of Decision: 23.11.2023

Surat Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**Present:** Mr. J.S. Sandhu, Advocate
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fifth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.107 dated 18.07.2020, under Section 22 of the NDPS Act, 1985, registered at Police Station Khuian Sarwar, District Fazilka.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody more than 3 years and 4 months and the petitioner is having clean antecedents and is not involved in any other case and the present case was planted upon him by the police due to political enmity. He further submitted that the allegations against the petitioner are that he was coming from Rajasthan in a canter from which there has been an alleged recovery of 1 lac tablets of *Tramadol*. He also submitted that the charges in the present case were framed on 13.01.2021, which is more than 2 years and 10 months ago but only 3 witnesses have been examined till date,

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out of which, one witness is a DSP, who was later on called for the purpose of fulfillment of Section 50 of the NDPS Act, another person was an independent witness who was later on given up by the prosecution and the third one was a formal witness, who was a sample carrier, who had deposited the tablets in the Forensic Laboratory. He submitted that none of the material witnesses, who was part of the police party and who apprehended the petitioner as per the prosecution has been examined till date despite the fact that the charges have been framed more than 2 years and 10 months ago but they did not care to depose before the Court.

3. In order to substantiate his arguments, he referred to the interlocutory orders which have been passed by the learned trial Court and photocopies of the same have been produced before this Court which are taken on record and mark as 'X'. While referring to the aforesaid zimni orders, he submitted that after the framing of charges on 13.01.2021, initially the case was adjourned because of the Covid-19 Pandemic, but thereafter, repeatedly summons were issued to the prosecution witnesses and even for four times, bailable warrants have been issued against them but they did not care to depose before the Court. He also submitted that the reason as to why the material witnesses are not caring to depose before the Court is that the petitioner was falsely implicated in the present case. He further submitted that net result of the same, the trial got delayed at the hands of the prosecution and the petitioner had to face incarceration for more than 3 years and 4 months.

4. Learned counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court passed 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, *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as “Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh” and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as “Rabi Prakash Vs. The State of Odisha” and contended that in view of the aforesaid factual position as well as the judgments passed by the Hon’ble Supreme Court 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. G.S. Sidhu, learned AAG, Punjab submitted that so far as the custody of the petitioner is concerned, the same is correct. He further submitted that it is also correct that the charges were framed on 13.01.2021 i.e. more than 2 years and 10 months ago and only three witnesses have been examined out of which one has been given up. He also submitted that none of the material witnesses, who was part of the police party and was the recovery witnesses, have been examined till date despite the fact that bailable warrants have been issued against them. He, has however, opposed the grant of regular bail to the petitioner on the ground that there was a recovery of 1 lac tablets of *Tramadol* from the petitioner which was a huge quantity and the same 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 antecedents of the petitioner are concerned, he submitted on instructions that it is correct that the petitioner is not involved in any other case.

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

7. It is a case where the custody of the petitioner comes out to be

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more than 3 years and 4 months. Since the recovery from the petitioner is about 1 lac tablets of *Tramadol* which is not only a commercial quantity under the NDPS Act but also a huge quantity, the prayer of the petitioner for grant of regular bail would be considered in the light of Section 37 of the NDPS Act. The petitioner is stated to be having clean antecedents and is not involved in any other case. The charges were framed on 13.01.2021 which is more than 2 years and 10 months ago and as per the interlocutory orders as referred to by the learned counsel for the petitioner that for four times, bailable warrants were issued against the prosecution witnesses, who are the police officials but they did not care to depose before the Court. One witness, who has been examined, is stated to be a sample carrier and another is stated to be an independent witness but has consequently been given up by the prosecution and the third one, who has been examined, is the DSP, who was called later on for the purpose of fulfillment of Section 50 of the NDPS Act. However, none of the police officials, who was part of the raiding party or who had intercepted the petitioner in his canter nor any of the material witness or the recovery witness has been examined till date. It is not understandable as to why for long period which is more than 2 years and 10 months, after the framing of the charges, these prosecution witnesses have failed to appear before the Court.

8. During the course of arguments, a specific query was raised to learned AAG, Punjab as to what is the justification with regard to non-appearance and failing to appear despite number of times, bailable warrants were issued against the prosecution witnesses to which he could not justify the same.

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.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. The 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

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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 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.”

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11. Similarly, the Hon'ble Supreme Court in *Dheeraj Kumar Shukla's case (supra)* has opined 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. Thereafter, the Hon'ble Supreme Court in *Rabi Prakash's case (Supra)* has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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 the facts and circumstances of the present case, no

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justification has come forth from the State Counsel with regard to non-appearance by the police officials before trial Court and who themselves have set the criminal law into motion and the result of the same is that the petitioner had to face incarceration for more than 3 years and 4 months. Therefore, considering the custody of the petitioner and the conduct of the police officials, this Court has got no other option except to draw an adverse inference against the prosecution which would lead this Court to have a *prima facie* view that at least at this stage only for the purpose of considering the prayer of the petitioner for grant of regular bail that he deserves the concession of bail. Furthermore, 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. Therefore, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon'ble Supreme Court of India.

14. 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.

15. 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.

23.11.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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