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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32451-2023
Date of decision: 13.09.2023

SANJU SINGH

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.531 dated 06.11.2020, under Sections 22-C, 27-A of the NDPS Act, registered at Police Station City Tohana, District Fatehabad, Haryana.

2. Learned counsel for the petitioner submitted that earlier two petitions were dismissed as withdrawn and one petition was dismissed on 20.12.2022. He further submitted that at that point of time only 7 out of 24 prosecution witnesses were examined and after that only one witness has been examined by the learned trial Court and the petitioner is in custody from 06.11.2020, which is more than 2 years and 10 months. He further submitted that the allegations against the petitioner were with regard to recovery of 3000

tablets of *Tramadol* but in the present case, the bar contained under Section 37 of the NDPS Act will not apply in view of the facts and circumstances of the present case. He further submitted that after the earlier bail petition was dismissed on 20.12.2022, the learned trial Court had adjourned the case for number of times but the prosecution witnesses did not care to depose before the Court. He referred to the interlocutory orders passed by the learned trial Court whereby even bailable warrants have been issued against the prosecution witnesses but still they did not care to depose before the Court. He further submitted that even otherwise also the witnesses which have been examined were not the material witnesses and no person from the police party although recovery witnesses were examined and those witnesses which were examined were only formal witnesses and the reason as to why the prosecution witnesses are not coming forward is that the petitioner has been falsely implicated in the present case. He has 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]** to contend 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. 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 another judgment of Supreme Court in **Dheeraj Kumar Shukla versus 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.

3. On the other hand, Mr. Vishal Kashyap, DAG, Haryana submitted that it is a case where although the custody of the petitioner is more than 2 years and 10 months but since there was recovery of 3000 tablets of *Tramadol* from the petitioner, the prayer of the petitioner is barred by the bar contained under Section 37 of the NDPS Act and earlier also his bail petition was dismissed in view of the aforesaid bar. He further submitted that the petitioner is involved in one more case although the same is not under the NDPS Act and therefore has opposed the grant of regular bail to the petitioner.

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

5. It is a case where the total custody of the petitioner comes out to be more than 2 years and 10 months and the present is a fourth bail petition. The earlier two petitions were dismissed as withdrawn and one petition was dismissed on 20.12.2022. After the dismissal of the aforesaid bail petition, number of times the matter was taken up by the learned trial Court but no witness except for one formal witness has been examined and therefore the present successive bail petition is maintainable. As per learned counsel for the petitioner only 8 prosecution witnesses have been examined who were the formal witnesses and not the material witnesses and the delay in the trial has been caused only because of the prosecution witnesses, who are the police officials who had set the criminal law into motion.

6. The 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 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”.

7. The Hon'ble Supreme Court in *Mohd. Muslim Hussain's case* (*supra*) has dealt with this 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 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.

8. 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.”

9. Recently, the 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. Therefore, considering the aforesaid totality and circumstances of the present case, especially the long custody of the petitioner which comes out to be more than 2 years and 10 months and the fact that till date no material witnesses have been examined and only 8 witnesses have been examined who are stated to be formal witnesses, 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 considering the long custody of the petitioner.

11. 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.

12. 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.

13.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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