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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-35072-2020

Date of Decision: 04.09.2023

Mewa Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Sekhon, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.56 dated 23.06.2020, under Sections 22, 61 of the NDPS Act, 1985, registered at Police Station Ghanaur, District Patiala.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 3 years, 2 months and 8 days as of today. He further submitted that it is a case where the petitioner is having clean antecedents and is not involved in any other case and it was only because of political rivalry in the village that the present FIR was planted upon the petitioner. He also submitted that as per the FIR, the petitioner was coming

on paved road from Village Lachhru Khurd side and after seeing the police party, he threw away the polythene bag on the road which he was carrying from where there was a recovery of 1300 tablets of *Tramadol*. He further submitted that his submission with regard to the fact that the present case was planted upon the petitioner is substantiated from the fact that the charges in the present case were framed by the learned trial Court on 26.11.2020 which is more than 2 years and 9 months ago but till date only two prosecution witnesses, namely, Kamal Sharma and ASI Tejpal Singh have been examined and they are only formal witnesses. Since the aforesaid Kamal Sharma had only put his UID sample and ASI Tejpal Singh was the person, who had deposited the sample in the forensic laboratory but none of the persons who were part of the police party or recovery witness etc. have been examined till date despite the fact that the charges were framed more than 2 years and 9 months ago. He further submitted that one another witness, who is the I.O. of the present case, was examined-in-chief on 09.02.2023 and the case was deferred by the learned Special Judge for his cross-examination and thereafter for 7 times the matter was adjourned but he has not submitted himself for his cross-examination.

3. During the course of arguments, the learned counsel for the petitioner has also supplied the photocopy of the zimni orders which were passed by the learned trial Court after the framing of the charges. While referring to the aforesaid zimni orders, he submitted that when the I.O. was examined on 09.02.2023 and the proceedings were deferred for his cross-examination and rather he was bound down to be present on the next date of hearing but thereafter, for 7 times the matter was taken up but he did not

appear for the reasons best known to him. Learned counsel for the petitioner also submitted that after the framing of the charges for about 10 times bailable warrants were issued against the prosecution witnesses, who are none other but the police officials who have set the criminal law into motion and the reason for non-appearing before the Court was that the petitioner was falsely implicated in the present case because of political rivalry in the village.

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. Sarabjit Singh Cheema, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for 3 years, 2 months and 8 days and it is also correct that the petitioner has clean antecedents and is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner which was thrown by him on the road,

was 1300 tablets of *Tramadol*, which 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.

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

7. It is a case where the petitioner has faced incarceration for about 3 years, 2 months and 8 days. The petitioner is stated to be having clean antecedents and is not involved in any other case. Since the recovered quantity in the present case is 1300 tablets of *Tramadol*, which falls in the category of commercial quantity, this Court would, therefore, consider the prayer of the petitioner for grant of regular bail in the light of Section 37 of the NDPS Act. During the course of arguments, the learned counsel for the petitioner has referred to various orders which have been passed by the learned trial Court after the framing of the charges and has contended that for 10 times, bailable warrants were issued against the prosecution witnesses, who are the police officials but they did not care to appear before the Court for deposition. In the present case, two witnesses earlier were examined, who were not even material witnesses but only formal witnesses. One of the witnesses, namely, ASI Baljeet Singh, who is the I.O. of the present case, has been examined-in-chief on 09.02.2023 and thereafter, the proceedings were deferred and he was bound down to appear on the next date of hearing but for 7 dates he did not turn up for submitting himself for cross-examination. The net result of the same was that the trial got delayed and the petitioner, who has no criminal background, had to face incarceration for 3 years, 2 months and 8 days.

8. During the course of arguments, this Court had raised a specific

query to the learned State counsel as to what was the justification as to why in the present case the prosecution witnesses, who are the police officials and who have set the criminal law into motion, have not cared to depose before the Court despite the fact that evenailable warrants were repeatedly issued against them and one of the witnesses was even bound down for appearing, to which the learned State counsel after taking instructions from the police official who is present in Court today could not offer any justification or explanation in this regard.

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.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.”

10. Now recently, 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 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.”

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. Further recently, 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. After hearing the learned counsels for the parties the facts and circumstances suggest that the petitioner has clean antecedents and is not involved in any other case and has already faced incarceration for 3 years, 2 months and 8 days and for last 2 years and 9 months after the framing of the charges, only two witnesses have been examined and who are the persons, who had either deposited the recovered contraband in the FSL or put the UID sample, but none of the person, who were part of the police party or recovery witness have been examined. However, one of the witnesses, namely, ASI Baljeet Singh has been examined-in-chief but not fully examined and after being bound down, he did not care to depose before the Court for 7 times as per the interlocutory orders referred by the learned counsel for the petitioner. 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 especially in the light of Article 21 of the Constitution of India. Consequently, this Court deems it fit and proper to grant regular bail to the

petitioner especially considering the long custody.

14. In view of the above, 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.

04.09.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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