

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34897-2023 (O&M)

Date of Decision: 27.07.2023

Ravi Kumar @ Kaku

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sukhcharan Singh Gill, Advocate,
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

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. 66 dated 01.06.2021, under Sections 22/29/61/85 of NDPS Act, registered at Police Station Sadar Sangrur, District Sangrur.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 01.06.2021 which is almost 2 years and 2 months and in the present case the charges were framed by the learned trial Court on 09.03.2022 which is almost 1 ½ years but only two witnesses have been examined in full and one witness has been examined in part. He submitted that it is a case where the petitioner is not having any criminal background and he is not involved in any other case. He submitted that as

per the prosecution, the petitioner and the other co-accused namely, Nirmal Sharma @ Nimmu, they were going on a scooter which slipped and a polythene bag of blue colour fell on the back of the road and the police officials arrested both the accused. He submitted that allegedly there was a recovery of 4000 tablets of Tramadol from the ground and there was no recovery from the petitioner and the other co-accused. He submitted that the other co-accused namely Nirmal Sharma @ Nimmu was a juvenile and he had faced the trial separately before the Juvenile Justice Board, Sangrur and on 05.06.2023 vide Annexure P-7, the aforesaid Nirmal Singh @ Nimmu has since been acquitted on the basis of benefit of doubt. While referring to the judgment of acquittal, he submitted that it was so observed by the learned Juvenile Justice Board that testimony of the prosecution witnesses created a serious dent carving a benefit of doubt in favour of the aforesaid co-accused Nirmal Singh @ Nimmu. He submitted that in the present case the charges were framed by the learned trial Court on 09.03.2022 which is almost 1 ½ years but only two witnesses have been examined and he has already faced incarceration for about 2 years and 2 months with no criminal background and there was no recovery from the person of the petitioner. He submitted that considering the aforesaid custody and also the fact that the other co-accused has since been acquitted, the petitioner may be considered for the grant of regular bail. He has 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 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 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. Rajiv Verma, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody for about 2 years and 2 months and only two witnesses have been examined in full and one witness has been examined in part. The acquittal of the other co-accused has not been denied by the learned State counsel and even otherwise also Annexure P-7 is the order of acquittal. He further submitted that the petitioner is not involved in any other case under the NDPS Act but he is involved in two more cases under the Prisons Act..

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

5. The petitioner has faced incarceration for about 2 years and 2 months and after the framing of the charges on 09.03.2022 only two witnesses have been examined in full and one in part. Undisputedly, as per the allegations two persons were caught on the spot i.e. the petitioner and the other co-accused namely Nirmal Singh @ Nimmu and the aforesaid co-accused Nirmal Singh @ Nimmu was tried by Juvenile Justice Board being juvenile

and has since been acquitted vide Annexure P-7. The petitioner is stated to be not involved in any other case under the NDPS Act except two cases under the Prisons Act.

6. 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”.

7. 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.

8. 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.

9. This Court would therefore consider not only the custody of the petitioner but also the fact that the other co-accused who was arrested alongwith the petitioner has since been acquitted, although by the Juvenile Justice Board but it would certainly become a ground for grant of regular bail to the petitioner. Considering the aforesaid facts and circumstances, the bar contained under 37 of the NDPS Act will not apply to the petitioner and also considering the fact that no recovery was effected from the person of the petitioner and therefore, this Court is of the view that the petitioner is entitled for the grant of regular bail in the light of Article 21 of the Constitution of India

10. 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.

11. 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.

27.07.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No