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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 21.11.2023

(I) CRM-M-35737-2023

CHATWINDER SINGH @ BUNTY

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-51034-2023

GURPREET SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D. S. Gandhi, Advocate
for the petitioner(s) in both the cases.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of regular bail to the petitioners.

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.77

dated 22.04.2022, under Sections 21 and 29 of the NDPS Act and challan was presented under Sections 21(c) and 29 of the NDPS Act (Section 29 of the NDPS Act was deleted later on while framing charges), registered at Police Station Special Task Force, SAS Nagar, Mohali, Punjab.

3. Both the petitions are second regular bail petitions and as per the learned counsel for the petitioners, the earlier petitions were dismissed by a Coordinate Bench of this Court by passing a common order on 15.07.2022.

4. Learned counsel for the petitioners in both the cases submitted that both the petitioners are in custody for about 1 year and 7 months and challan in the present case has been presented and thereafter, charges have also been framed on 02.09.2022 by the learned trial Court. He further submitted that more than 1 year and 2 months have elapsed after the framing of the charges but only 1 prosecution witness out of total cited 15 prosecution witnesses has been examined. He also submitted that both the petitioners have clean antecedents and they are not involved in any other case and the present case was planted upon the petitioners. To substantiate his arguments, he submitted that even initially the call details and the CDR of the tower locations etc. were not preserved by the Investigating Officer despite the fact that repeated complaints were given by the family members of the petitioners to the higher authorities and it was only thereafter, on the orders passed by the learned trial Court that such record was preserved. He further submitted that the petitioners were picked up at different time and not on the time which is so mentioned in the FIR and it is a total case of false implication. He further submitted that both the

petitioners have clean antecedents and are not involved in any other case and therefore, they may be considered for grant of regular bail.

5. Learned counsel for the petitioners further submitted that after the framing of the charges, which is more than 1 year and 2 months ago, the learned trial Court had adjourned the case initially for the production of the accused and thereafter for two times, bailable warrants were issued by the learned trial Court for the purpose of securing the presence of the prosecution witnesses including the complainant, namely, SI Baljit Singh, at whose instance, the complaint was lodged. He also submitted that for the purpose of securing the presence of aforesaid SI, twice bailable warrants were issued and thereafter, he was bound down and ultimately he had appeared before the Court for deposition but as per the FIR, there were number of other members of the police party as well, who have not cared to depose before the Court notwithstanding the fact that more than 1 year and 2 months have elapsed after the framing of the charges. He further submitted that the case of the petitioners is of false implication and there is no justification as to why those police officials, who were the prosecution witnesses did not care to depose before the Court with a result that the petitioners, who have clean antecedents had to face incarceration for about 1 year and 7 months for no fault of their because after the framing of the charges at least it was the duty of the prosecution witnesses to depose before the Court. He referred to the judgments of 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 versus The State of Uttar Pradesh", 2023 SCC**

Online SC 918 and “Rabi Prakash versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023 to contend that in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the present case although the recovery shown to be effected from the petitioners is 260 grams of *heroin*, which falls in the category of commercial quantity under the NDPS Act.

6. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that more than 1 year and 2 months have elapsed and only 1 prosecution witness has been examined and that too only the complainant but the other police officials, who were part of the raiding party etc. have not deposed before the Court. He has also not disputed that even for securing the presence of aforesaid SI Baljit Singh, twiceailable warrants were issued as per the orders of the learned trial Court. He further submitted that so far as the criminal antecedents of both the petitioners are concerned, the same have also been verified that both the petitioners are not involved in any other case and they have clean antecedents. However, he has opposed the grant of regular bail to both the petitioners on the ground that the confiscated quantity in the present case falls in the category of commercial quantity although even if it is marginally higher than the defined commercial quantity under the NDPS Act.

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

8. It is a case where both the petitioners are in custody for about 1 year and 7 months and they are stated to have clean antecedents but in the present case as per the learned counsel for the parties and also on perusal of the

interlocutory orders as referred by learned counsel for the petitioners which have been passed by the learned trial Court would show that on 02.09.2022, the charges were framed, which is more than 1 year and 2 months but only 1 prosecution witness has been examined and that too afterailable warrants being issued twice against him and thereafter, he was bound down. During the course of arguments, this Court had raised a query to the learned State counsel as to what was the justification as to why the prosecution witnesses, who were police officials and part of the police party did not care to depose before the Court for deposition to which he could not offer any justification.

9. 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 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. 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.*

11. 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.”

12. 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.”

13. After hearing the learned counsel for the parties, this Court is of the considered view that although the alleged recovery from both the petitioners is stated to be 260 grams of *heroin*, which is marginally higher than the commercial quantity but considering the custody of both the petitioners, the stage of the trial and the fact that more than 1 year and 2 months has elapsed after the framing of the charges that the prosecution witnesses did not depose before the Court and only one of them has deposed and that too after bailable warrants were issued against him twice and also the fact that the petitioners have clean antecedents, 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 as well as in the light of the aforesaid judgments passed by the Hon’ble Supreme Court.

14. Consequently, both the petitions are allowed. The petitioners 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.

15. 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 petitions only.

21.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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