

CRM-M-38758-2022 and
CRM-M-32223-2023

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2023:PHHC:140364

212+218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 03.11.2023

(I) CRM-M-38758-2022

DEEPAK KUMAR ALIAS DEEPU

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

(II) CRM-M-32223-2023

SANTOSH SINGH

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manvinder Sidhu, Advocate
for the petitioner in CRM-M-38758-2022.

Mr. Vinay Gaur, Advocate,
Mr. Amit Gautam, Advocate and
Ms. Vandana Kashyap, Advocate
for the petitioner in CRM-M-32223-2023.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. Both these petitions are taken up together for final disposal with
the consent of the learned counsel for the parties since both these petitions arise

out of the same FIR and the prayer in both the cases is for the grant of regular bail.

2. Both these petitions are the second petitions filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.370 dated 07.09.2021, under Section 15 (c) of the NDPS Act, registered at Police Station Rania, District Sirsa, Haryana.

3. Learned counsel for both the petitioners submitted that both the petitioners are in custody from 07.09.2021, which is almost 2 years and 2 months. They further submitted that it is a case where the allegations as per the prosecution are that the police received an information with regard to both petitioners that some intoxicant substance is to be transported by both the petitioners and when the police intercepted their vehicle, they recovered 1 quintal and 80 kgs. of *poppy husk* from them, which they stated to have got from Rajasthan. They also submitted that the charges in the present case have been framed by the learned trial Court on 01.07.2022 and thereafter repeatedly bailable warrants were issued against the prosecution witnesses who had set the criminal law into motion and even on one date, salary of one of the prosecution witnesses was directed to be stopped by the learned trial Court with immediate effect since the said witness was not appearing and now with great efforts, 6 prosecution witnesses have been examined out of total 22 cited prosecution witnesses. They also submitted that the aforesaid delay in the trial was not caused because of the petitioners but it was due to non-availability of the prosecution witnesses. They further submitted that so far as the petitioner-Deepak Kumar alias Deepu is concerned, he has clean antecedents and is not

involved in any other case, whereas so far as petitioner-Santosh Singh is concerned, he is involved in one more case under the NDPS Act but the same was registered against him after the registration of the present FIR while he was already in custody in order to falsely implicate him.

4. Learned counsel for petitioner-Deepak Kumar alias Deepu submitted that earlier the petitioner was granted interim bail by this Court on medical grounds because he was suffering from acute Tuberculosis which has travelled to lungs as well and regarding which a medical certificate was also attached. He submitted that the petitioner is regularly getting high fever due to Tuberculosis although he is getting treatment in the jail but he needs a specialized treatment for the purpose of curing his Tuberculosis.

5. Both the learned counsel for the petitioners have referred to a judgment of Hon'ble Supreme Court in **"Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51** and a recent judgment of Hon'ble Supreme Court in **Manish Sisodia versus Central Bureau of Investigation**, arising out of **Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023**, wherein it has been so observed by Hon'ble Supreme Court that when there is a delayed trial and speedy trial is denied to an accused person then it is a ground for grant of bail in the facts and circumstances of a particular case.

6. On the other hand, Mr. Vishal Kashyap, DAG, Haryana submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that the so far as petitioner-Deepak Kumar alias Deepu is concerned, he has clean antecedents and is not involved in any other

case and is also suffering from Tuberculosis. So far as petitioner-Santosh Singh is concerned, he is involved in one more case under the NDPS Act but the same was registered after the registration of the present FIR. He has however opposed the grant of bail to both the petitioners on the ground that the prayer of both the petitioners is hit by the bar contained under Section 37 of the NDPS Act because the confiscated quantity falls in the category of the commercial quantity.

7. I have heard the learned counsels for the parties in both the cases.

8. Both the petitioners have faced incarceration for more than 2 years. Both the petitioners are in custody from about 2 years and 2 months. A perusal of the interlocutory orders passed by the learned trial Court which have been referred to by both the learned counsels for the petitioners would show that for number of times, bailable warrants were issued against the prosecution witnesses and also even on one date, the salary of one of the prosecution witnesses, who is a police officer was also stopped.

9. The trial was delayed because of non-appearance of the prosecution witnesses at the time of trial. Therefore, the aforesaid judgments passed by the Hon'ble Supreme Court referred to by the learned counsels for both the petitioners are applicable in the present case.

10. 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 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”.

11. Recently, the Hon'ble Supreme Court in **Manish Sisodia's case** (**supra**) has observed as under:-

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution,

and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

12. After hearing the learned counsel for the parties and considering the peculiar facts and circumstances of the present case, this Court is of the view that bar contained under Section 37 will not apply to the petitioners because of the long incarceration and status of the trial, wherein it was got delayed due to non-appearance of the prosecution witnesses and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

13. Therefore, considering the aforesaid totality and circumstances of the present case and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to grant regular bail to both the petitioners.
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.

03.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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