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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39821-2023
Date of decision: 22.08.2023

SUMAN TEWARI

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Aruz Khan, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.1 dated 01.01.2022, under Sections 22/21-C of the NDPS Act, registered at Police Station STF, Phase-4 Mohali, District SAS Nagar, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 01.01.2022, which is almost 1 year and 8 months. He further submitted that the petitioner has no criminal background and he is not involved in any other case. He further submitted that in the present case, *heroin* of 1 kg. and 200 grams was planted upon the petitioner at night time by the police due to political rivalry where the petitioner resides. He further submitted that after the presentation of the challan, charges were framed on 10.05.2022 and almost 1

year and 3 months have elapsed and only three prosecution witnesses have been examined and the material witnesses still remain to be examined. He has referred to the interlocutory orders passed by the learned trial Court which has been attached along with the present petition as Annexure P-5, wherein for about six times bailable warrants were issued against the persons, who are none other but the police officials at whose instance the present FIR was lodged and who had set the criminal law into motion. He made a particular reference to the order passed by the learned trial Court on 05.07.2023, in which the learned trial Court rather observed that it is not understandable that why the prosecution is reluctant to examine the witnesses despite the fact that they have availed numerous opportunities to conclude its evidence since the charges were framed on 10.05.2022 but has failed to do so. The learned trial Court after observing the aforesaid again issued bailable warrants for the remaining prosecution witnesses. The learned trial Court had also observed in the aforesaid order that the material witnesses are yet to be examined in this case. The matter was adjourned to 28.07.2023 and on the adjourned date, again only one of the witnesses was examined but no other witness was present despite the fact that bailable warrants were earlier issued. Thereafter, the learned trial Court was again constrained to issue bailable warrants and in this way, about six times bailable warrants were issued against the police officials. He further submitted that since it was a case which was planted upon the petitioner, the prosecution witnesses, who are none other but the police officials are not deliberately coming forward for deposing before the Court with a result that the petitioner had to face incarceration for about 1 year and 8 months. He further submitted

that the petitioner is having an old ailing mother and his father had already passed away earlier and the prosecution witnesses are not deposing before the Court despite bailable warrants issued against them and now only three prosecution witnesses have been examined. He referred to the judgments of the Hon'ble Supreme Court passed 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, Special Leave to Appeal (Criminal) No.4169 of 2023 titled as "Rabi Prakash versus The State of Odisha" and Special Leave to Appeal (Criminal) No.6690 of 2022 titled as "Dheeraj Kumar Shukla versus The State of Uttar Pradesh" in this regard. He further submitted that in view of the aforesaid factual position, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has filed the custody certificate of the petitioner in Court today and the same is taken on record. As per the custody certificate filed, petitioner is in custody for 1 year 7 months and 20 days and he is not involved in any other case. He has opposed the grant of regular bail to the petitioner on the ground that the prayer made by the petitioner is hit by the bar contained under Section 37 of the NDPS Act since the recovery from the petitioner was 1 kg. and 200 grams of *heroin*, which falls in the category of commercial quantity.

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

5. The petitioner is in custody for 1 year 7 months and 20 days as per the custody certificate filed in Court and the same is not in dispute. Three prosecution witnesses have been examined till date and for about six times, the

learned trial Court was constrained to issue bailable warrants against the prosecution witnesses, who are none other but the police officials, who have set the criminal law into motion. The petitioner is stated to be not involved in any other case and has clean antecedents. About 1 year and 3 months have elapsed after the framing of the charges and only three prosecution witnesses have been examined despite being summoned through bailable warrants numerous times but they did not come forward to depose before the learned trial Court.

6. 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. 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 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. After hearing learned counsel for the parties, this Court is of the view that considering the aforesaid totality and circumstances of the present case where the petitioner has clean antecedents and he is not involved in any other case and after about 1 year and 3 months of the framing of charges, only three prosecution witnesses have been examined and for about six times the learned trial Court was constrained to issue bailable warrants against the prosecution witnesses and even strict orders were also passed as aforesaid, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. Therefore, this Court is of the view that the prayer of the petitioner deserves to be considered in the light of Article 21 of the Constitution of India.

11. Consequently, the present petition is allowed. The petitioner shall be released on regular bail 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.

22.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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