

439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.132 dated 14.05.2021, under Sections 15, 27-A and 29 of the NDPS Act as also Section 188 of the IPC and Section 51(b) of the Disaster Management Act, 2005, registered at Police Station Sadar Fatehabad, District Fatehabad and the petition (CRM-M-369 of 2022) is filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.132 dated 14.05.2021, under Section 15 of the NDPS Act as also Section 188 of the IPC and Section 51 (b) of the Disaster Management Act, 2005, registered at Police Station Sadar Fatehabad, District Fatehabad.

3. Mr. V. B. Godara, learned counsel appearing on behalf of the petitioner (in CRM-M-44754 of 2021) and Ms. Rana Ghuman, learned counsel appearing on behalf of the petitioner (in CRM-M-369 of 2022) have submitted that both the petitioners have apprehended by the police on 14.05.2021 and the allgations were that they were travelling in a vehicle and there was a recovery of 101 kgs. of poppy straw from them. Both learned counsel have submitted that both the petitioners have been in fact falsely implicated in the present case and both the petitioners have clean antecedents. They further submitted that thereafter about two years and two months have elapsed and not even a single prosecution witness has been examined and more particularly even charges have been framed now on 20.05.2023 and delayed trial particularly when they have clean antecedents and they were not involved in any other case. They further submitted that considering the aforesaid facts and circumstances, they

may be considered for the grant of regular bail. They further submitted that the aforesaid recovery of 101 kgs. of poppy straw was alongwith the bag and allegedly recovered from the present two petitioners which does not belong to any of the petitioners, the quantity does not fall within the category of commercial quantity after excluding the bag.

4. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana has stated that it is correct that both the petitioners are in custody from 14.05.2021 which is more than two years and two months and the charges were framed in the present case after the period of two years after their arrest, i.e. on 20.05.2023. He further submitted that both the petitioners are not involved in any other case.

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

6. The allegation qua both the petitioners was with regard to the confiscation of 101 kgs. of poppy straw from two persons. The period of custody of both the petitioners is not in dispute. More than two years have elapsed after the arrest of the petitioners and not even a single prosecution witness has been examined and the charges were framed after two years. Nothing was brought to the notice of this Court as to whether there was any fault of the petitioners in the delay of the trial or not. In view of the facts and circumstances of the present case, the custody of both the petitioners would be considered in the light of Article 21 of the Constitution of India. The Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 (10) SCC 51 has dealt with the issue with regard to the repeated adjournments and

its effect upon the fundamental rights of the accused. The relevant portion of 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. Thereafter, the Hon'ble Supreme Court in **Mohd Muslim @ Hussain versus State (NCT of Delhi)** Criminal Appeal No.943/2023, **date of decision 28.03.2023**, the Hon'ble Supreme Court again reiterated that the delayed trial and the long custody is a factor which can be

considered for grant of bail given peculiar facts and circumstances of each and every case. The relevant portion of the aforesaid judgment is 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 Malik¹⁹). 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 19 (2009) 2 SCC 624 14 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. In a recent judgment of the Hon'ble Supreme Court in **Rabi Prakash v. The State of Odisha** (Special Leave to Appeal (Crl.) No.(s) 4169 of 2023) also observed that 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. The relevant portion of the aforesaid judgment 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. It is a case where both the petitioners are stated to be not involved in any other case and they are not habitual offenders and have clean antecedents as per learned counsel for the parties. Charges in the present case were framed after lapse of two years and therefore as of now no prosecution witness has been examined. Therefore, considering the

aforesaid facts and circumstances as also in the light of Article 21 of the Constitution of India, the bar contained under Section 37 of the NDPS Act will not apply to the present two petitioners.

10. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to both the petitioners. Consequently, both the petitions are allowed. The petitioners 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 only meant for the purpose of decision of both these petitions.

(JASGURPREET SINGH PURI)
JUDGE

July 20, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No