

227

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-38763-2023

Date of Decision: 29.11.2023

Manjeet

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikash, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.112 dated 05.03.2021, under Section 18 of the NDPS Act and Section 27-A of the NDPS Act (added later on), registered at Police Station Sadar Narnaund, District Hansi.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 05.03.2021 which is more than 2 years and 8 months. He further submitted that the petitioner has clean antecedents and is not involved in any other case and the present case was planted upon him by the police due to political enmity. He also submitted that as per the allegations, the petitioner along with the other co-accused, namely, Aatish @ Ashish was apprehended and there has been an alleged recovery of 2 kgs. and 700 of *Opium* from the petitioner, which is marginally higher than the

prescribed commercial quantity under the NDPS Act. So far as the alleged recovery from the aforesaid co-accused, namely, Aatish @ Ashish is concerned, he submitted that from him also there has been an alleged recovery of about 1.300 kgs. of *Opium*. He submitted that even otherwise also the aforesaid co-accused, namely, Aatish @ Ashish, has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-29903-2021 on 28.01.2022 and almost 1 year and 10 months have elapsed after the co-accused has been granted regular bail, the petitioner is still facing incarceration and now his total custody comes out to be 2 years and 8 months. He further submitted that only 7 out of 26 witnesses have been examined till date and the delay has been caused due to non-appearance of the prosecution witnesses. He submitted that considering the long custody of the petitioner and also the fact that similarly situated co-accused, namely, Aatish @ Ashish has already been extended the benefit of regular bail, therefore, he may also be considered for grant of regular bail on the ground of parity.

3. Learned counsel for the petitioner further referred to the judgments of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)", 2023 AIR(SC) 1648, *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "Rabi Prakash Vs. The State of Odisha" and contended that in view of the aforesaid factual position as well as the judgments passed by the Hon'ble Supreme Court when there is a long

delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

4. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the aforesaid co-accused, namely, Aatish @ Ashish has been extended the benefit of regular bail by a Co-ordinate Bench of this Court on 28.01.2022. So far as the antecedents of the petitioner are concerned, he submitted that it is correct that the petitioner is not involved in any other case but he has opposed the grant of bail to the petitioner on the ground that recovered quantity from the petitioner is 2 kgs. and 700 grams of *Opium* which falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

6. The petitioner has already faced incarceration for more than 2 years and 8 months and he is stated to be having clean antecedents and is not involved in any other case and till date, only 7 out of 26 witnesses have been examined. A Co-ordinate Bench of this Court has already granted regular bail to the co-accused, namely, Aatish @ Ashish, who was also caught on the spot and that bail was granted in CRM-M-29903-2021 on 28.01.2022, which is 1 year and 10 months ago. The alleged recovery from the petitioner is 2 kgs. and 700 grams of *Opium*, which falls in the category of commercial quantity under the NDPS Act and therefore, the prayer of the petitioner for grant of regular bail would be considered in the light of Section 37 of the

NDPS Act.

7. The Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* discussed this issue with regard to delay in trial and its effect on the right to life 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.”

8. The Hon'ble Supreme Court in *Mohd. Muslim @ Hussain's*

case (supra) also discussed the issue with regard to delay in trial and the long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. The relevant Paras of the aforesaid judgment 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.”

9. Similarly, the Hon’ble Supreme Court in ***Dheeraj Kumar Shukla’s case (supra)*** has opined 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.”

10. Further recently, the Hon’ble Supreme Court in ***Rabi Prakash’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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.”

11. Therefore, this Court is of the view that considering the long custody of the petitioner and his clean antecedents and the fact that the similarly situated co-accused has already been enlarged on regular bail by a Co-ordinate Bench of this Court, the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon’ble Supreme Court of India and he deserves the concession of regular bail.

12. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

13. 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 present petition.

29.11.2023

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |