

CRM-M-39473-2023

2023:PHHC:144831

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-39473-2023
Date of Decision:15.11.2023**

Jagsir @ Ghunghuru

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanchit Choudhary, Advocate for the petitioner.
Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a sixth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No. 406 dated 15.07.2016, under Sections 15 and 27-A of of the NDPS Act, 1985 and Sections 147, 149, 186, 224, 225, 332 and 353 IPC registered at Police Station Sadar Rattia, District Fatehabad.

2. It has been submitted by the learned counsel for the petitioner that although the present is sixth successive bail petition but considering the long custody of the petitioner, the same would be maintainable. He submitted that the petitioner is in custody since 19.11.2018, which is approximately five years of custody and submitted that only 5 out of 33 prosecution witnesses have been examined. He further submitted that as per the allegations, there was a recovery of 190 kilograms of poppy husk from

the house of the petitioner and submitted that there was no recovery from

the conscious possession of the person of the petitioner and even otherwise also considering the long custody of the petitioner, he is entitled for grant of regular bail in the light of 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', 'Rabi Prakash versus The State of Odisha', 'Special Leave to Appeal (Criminal) No.4169 of 2023' and 'Manish Sisodia versus Central Bureau of Investigation', arising out of 'Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023'.

3. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana, has stated that so far as the custody period of the petitioner is concerned, the same is correct and he is in the custody for about five years. He however submitted that since the recovery in the present case was huge i.e recovery of 190 kilograms of poppy husk, which falls in the category of commercial quantity, he is not entitled for the grant of regular bail in view of the bar contained under Section 37 of the NDPS Act. He also submitted that the petitioner is involved in five more cases under the NDPS Act and he is a habitual offender and therefore he does not deserve the concession of regular bail. He also stated that only five witnesses have been examined till date. He further submitted that the petitioner also attacked the police party when the police party had reached the house of the petitioner.

4. At this stage, learned counsel for the petitioner stated that out of the aforesaid five cases as mentioned by learned counsel for the State, the petitioner stands acquitted in two cases.

I have heard learned counsels for the parties.

6. The custody of the petitioner is about 5 years and only 5 out of 33 prosecution witnesses have been examined. The allegations are pertaining to recovery of 190 kilograms of poppy husk and also obstructing the police officials. This Court is of the view that the objection taken by learned State counsel pertaining to Section 37 of the NDPS Act and also the fact that the petitioner is a habitual offender and involved in five more cases cannot become a ground for denial of bail to the petitioner in view of the fact that the petitioner has already faced incarceration for about five years. As per the learned State counsel, the trial is at a stage where only 5 witnesses out of 33 prosecution witnesses have been examined.

7. 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”.

8. 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.*

9. 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.*”

10. 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

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.”

11. Recently, 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. Therefore, this Court is of the view that the petitioner will be entitled for the grant of bail purely on the ground of long custody of approximately 5 years and the bar of Section 37 will not be applicable to the petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments.

13. 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.

14. 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.

(JASGURPREET SINGH PURI)
JUDGE

15.11.2023
‘Rajneesh’

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No