

CRM-M-46794-2021 (O&M) and
CRM-M-26302-2022 (O&M)

-1- 2023:PHHC:147916

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46794-2021 (O&M)
Date of Decision: 21.11.2023

(I)
Maninder Singh @ Munshi

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-26302-2022 (O&M)

(II)
Amandeep Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jasdeep Singh, Advocate,
for the petitioner in CRM-M-46794-2021.

Mr. Naveen Sharma, Advocate,
for the petitioner in CRM-M-26302-2022.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of

regular bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 87 dated 26.05.2021, under Sections 21/22/29 of NDPS Act, registered at Police Station Talwandi Sabo, District Bathinda.

3. Learned counsel appearing on behalf of the petitioner **Maninder Singh @ Munshi** in CRM-M-46794-2021 submitted that the petitioner **Maninder Singh @ Munshi** is in custody for 2 years, 5 months and 8 days and learned counsel appearing on behalf of the petitioner **Amandeep Singh** in CRM-M-26302-2022 submitted that the petitioner **Amandeep Singh** is in custody for 1 year, 7 months and 14 days. They submitted that in the present case the challan was presented by the police on 15.11.2021 and 2 years have elapsed that even charges have not been framed till date and submitted that it is a case where the allegations were that the police had apprehended two accused namely, **Arshveer Mittal @ Shoban** and **Amandeep Singh** (Petitioner in CRM-M-26302-2022) and from them there was recovery of 13.5 grams of Etizolam which falls in the category of commercial quantity under the NDPS Act and also 10 grams of heroin. They submitted that thereafter on the statement made by one **Gurlal Singh @ Bachi** the name of the petitioner **Maninder Singh @ Munshi** was nominated later on, on the ground that the aforesaid contraband was supplied by the petitioner **Maninder Singh @ Munshi**. They further submitted that the present FIR was planted upon the petitioners and so far as the petitioner **Amandeep Singh** is concerned, he is having clean antecedents and is not involved in any other case and so far as the petitioner **Maninder Singh @**

Munshi is concerned, there are seven more cases and it was only because of this reason that on the basis of disclosure statement his name was nominated by the police on their own but he has nothing to do with the present case and there was no recovery effected from the petitioner. Both the learned counsel submitted that be that as it may, the involvement of the petitioner **Maninder Singh @ Munshi** in the other cases cannot become a ground for denial of bail to the petitioner in view of the peculiar facts and circumstances of the case wherein about 2 years have elapsed after the filing of the challan that even charges have not been framed in the present case and have also referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]* and also a latest judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]* in this regard.

4. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab has submitted that the reasons as to why the charges have not been framed are that one of the other co-accused namely, Arshveer Mittal @ Shoban who was also apprehended on the spot was granted interim bail but he thereafter absconded and declared as P.O and the matter has been adjourned from time to time but the charges could not be framed against the present petitioners as well and so far as the custody period of the petitioners is concerned, the same is correct. He has however opposed the grant of regular bail to the petitioners on the ground that the confiscated quantity falls in the category of commercial quantity and, therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

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

6. It is a case where the petitioner **Maninder Singh @ Munshi** is in custody for 2 years, 5 months and 8 days and petitioner **Amandeep Singh** is in custody for 1 year, 7 months and 14 days and as per the learned counsel for the parties, the petitioner **Amandeep Singh** was earlier on interim bail and thereafter on the receipt of the FSL report, he had surrendered but the other co-accused namely, **Arshveer Mittal @ Shoban** did not surrender and was declared as P.O with a result that the trial Court kept on adjourning the case as per the learned counsel for the parties and charges have not been framed till date despite the fact that the challan was presented 2 years ago. The custody of the petitioners has been elongated only because of the reason that one of the co-accused is P.O and till date charges have not been framed. The custody cannot be perpetuated only because of the aforesaid reason.

7. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of 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”.

8. Recently also the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with the issue pertaining to delay in the trial *vis-a-vis* bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.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. In view of the facts and circumstances of the present case and considering the judgment of the Hon'ble Supreme Court as aforesaid, this Court is of the view that the bar of Section 37 of the NDPS Act will not apply to the present petitioners and even if one of the petitioners namely [Maninder Singh @ Munshi](#) is involved in 7 more cases, as per the learned counsel for the parties, still that will not become a ground for denial of bail considering the facts and circumstances of the present case.
10. Consequently, both the petitions are allowed. Both 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, if not required in any other case.
8. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

21.11.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking : Yes/No

Whether reportable : Yes/No