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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40468-2023(O&M)
Date of Decision: 19.10.2023

Mani Sood @ Money Sood

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. N.S. Dadwal, Advocate, for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.0122 dated 12.06.2022, under Section 21 of NDPS Act (Challan presented under Sections 21, 21-C of NDPS Act), registered at Police Station Special Task Force, District STF Wing.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 12.06.2022 which is almost 1 year and 4 months and in the present case the charges were framed on 21.10.2022 and almost 1 year has elapsed but no prosecution witness has been examined till date. He submitted that the allegations against the petitioner were that a secret information was received by the police that a boy was coming on a motorcycle and was having some intoxicant substance and thereafter the motorcycle was intercepted and the petitioner was apprehended along with

500 grams of heroin. He further submitted that the petitioner was falsely implicated in the present case in view of the fact that earlier he was involved in one case under NDPS Act and he was convicted and was sentenced to pay fine only. He further submitted that at the time when the petitioner was apprehended on the basis of a secret information and it was the duty of the police official to have served him with a notice under Section 50 of the NDPS Act properly and in accordance with law but the same has not been done. He submitted that as per the notice the offer which was made was that he was offered to be searched in the presence of a Magistrate or a Gazetted Officer of other department and has submitted that the aforesaid offer was bad and in violation of Section 50 of the NDPS Act because as per the strict meaning of Section 50 and as so enunciated by the Hon'ble Supreme Court in number of cases the offer can be only to be get searched from a Magistrate or a Gazetted Officer and no adjectives can be added to the same.

3. He further submitted that apart from the above, even otherwise also one year has elapsed after the framing of the charges but not even a single prosecution witness has been examined. During the course of arguments, learned counsel for the petitioner has also supplied photostat copies of the interlocutory orders passed by the learned Judge, Special Court, Ludhiana and has submitted that after the framing of the charges the case was adjourned for about 8 times and repeatedly the prosecution witnesses were summoned but they did not care to depose and these are the prosecution witnesses who are the police officials who had set the criminal law into motion and there is no justification as to why for long one year, they have not cared to depose before the Court with a result that the

petitioner had to face incarceration for 1 year and 4 months. He further submitted that a perusal of the aforesaid orders would show that out of the aforesaid 8 dates even the petitioner was not produced before the Court and therefore, the delay has been caused by the police officials and the jail officials. He 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 *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648] and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected and therefore, the bar of Section 37 of the NDPS Act will not apply to the present petitioner.

4. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that till date no prosecution witness has been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the confiscated quantity 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 counsel for the parties.

6. It is a case where the petitioner has already faced incarceration for 1 year and 4 months and the charges in the present case were framed on 21.10.2022. As per the learned counsel for the parties, not even a single prosecution witness has been examined till date despite the fact that about 1 year has elapsed after the framing of the charges. Learned counsel for the

petitioner during the course of arguments has referred photostat copies of the orders passed by the learned trial Judge which shows that after the framing of the charges the petitioner was not even produced before the Court and it was only on one occasion that he was produced. Apart from the above repeatedly summons were issued to the police officials who are the prosecution witnesses but they did not care to depose before the Court and one year has elapsed after the framing of the charges. It appears that the delay has been caused only by the prosecution witnesses and not by the petitioner.

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

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. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. 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. After hearing the learned counsel for the parties, this Court is of

the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner and the stage of the trial whereby about 1 year has elapsed after the framing of the charges but no prosecution witness has been examined, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India.

10. Consequently, the present petition is allowed. The petitioner 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.

11. 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 petition only.

19.10.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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