

CRM-M-41188-2023 (O&M)

223

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-41188-2023 (O&M)

Date of Decision: 03.11.2023

Jaswinder Kaur @ Rani

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Munish Gulati, Advocate
for the petitioner.

Mr. H.S. Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.80 dated 13.05.2022, under Section 22 of the NDPS Act, 1985, registered at Police Station Nihal Singh Wala, District Moga.

2. It has been submitted by learned counsel for the petitioner that the petitioner is a lady of the age of 35 years and is a widow. He further submitted that she has been falsely implicated in the present case at the instance of the police and is not involved in any other case and has clean antecedents and it was only because of rivalry in the village that the present FIR has been planted upon her by the police. He also submitted that the petitioner is in custody since 13.05.2022, which is more than 1 year and 5 months and as per the allegations she was standing near Gurdwara Sahib

CRM-M-41188-2023 (O&M)

where the police got an information that she was holding a bag in her hand and thereafter, they recovered 140 tablets of *Etizolam* having weight of 18.76 grams from her which although falls in the category of commercial quantity under the NDPS Act, but the bail petition of the petitioner is not hit by the bar contained under Section 37 of the NDPS Act in view of the peculiar facts and circumstances of the present case. He further submitted that after the petitioner was arrested and the trial commenced, the learned trial Court framed the charges on 20.09.2022 which is almost 1 year and 1 month ago and also referred to the interlocutory orders passed by the learned trial Court which have been attached along with the present petition. He further submitted that on 24.01.2023 one of the prosecution witnesses, namely, ASI Gurnaib Singh failed to appear before the Court despite service and he was summoned through bailable warrants in the sum of Rs.5,000/- with the surety of like amount and one more witness, namely, Inspector Maghar Singh, who apprehended the petitioner and is the I.O. of the present case, did not appear since as per the order of the learned trial Court, he remained unserved and fresh summons were issued to him. Thereafter, the aforesaid Inspector Maghar Singh came present but was examined-in-chief because the cross-examination was deferred at the request of the learned defence counsel, but the aforesaid material witness, namely, Maghar Singh, who is the I.O., was bound down for 14.07.2023 and at the same time non-bailable warrants were issued to the ASI Gurnaib Singh again. However, vide orders dated 14.07.2023 passed by the learned trial Court, the aforesaid PW-1 Maghar Singh failed to appear despite being bound down and in this way even aforesaid Maghar Singh was also summoned through bailable warrants for a sum of Rs.5,000/- and thereafter, the matter was adjourned for

CRM-M-41188-2023 (O&M)

15.09.2023 and he again did not appear on the aforesaid date on 15.09.2023 and in this way till date the aforesaid Maghar Singh has not been cross-examined despite being bound down and despite being issued bailable warrants twice. He also submitted that in this way only one prosecution witness has been examined that too only partly i.e. the aforesaid Maghar Singh, who was examined-in-chief in the month of January and till date he has not appeared. Learned counsel for the petitioner submitted that in this way more than 1 year and 1 month has elapsed after the framing of the charges and the trial has been delayed only at the instance of the prosecution witnesses, who are the persons who had set the criminal law into motion rather the aforesaid Maghar Singh is the person, who had apprehended the petitioner and had falsely implicated him and he deliberately did not choose to appear before the Court and did not subject himself to cross-examination.

3. Learned counsel for the petitioner has 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 also referred to the latest judgment of the Hon'ble Supreme Court passed in *Special Leave to Appeal (Criminal) No.8188 of 2023* "Manish Sisodia Vs. Central Bureau of Investigation" decided on 30.10.2023, 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

CRM-M-41188-2023 (O&M)

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. H.S. Sitta, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for more than 1 year and 5 months and it is also correct that till today only one witness has been examined in part. He further submitted that the petitioner has clean antecedents and is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner, 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 is stated to be a widow of the age of 35 years and she has clean antecedents and is not involved in any other case. A perusal of the orders which have been annexed with the present petition and also so stated by learned counsel for the petitioner would show that more than 1 year and 1 month have elapsed after the framing of the charges and only one witness has been examined that also examination-in-chief only and a perusal of the orders would also show that after he was examined-in-chief, he was bound down to come and depose before the Court and subject himself to cross-examination but he did not appear and thereafter, even twice bailable warrants have been issued against him. As per the FIR, the aforesaid person, namely, Maghar Singh who is the person who apprehended the petitioner and stated to be I.O. of the case.

7. During the course of arguments, a specific query was raised to the State counsel as to what was the justification as to why in the present

CRM-M-41188-2023 (O&M)

case prosecution witnesses, especially the person who had apprehended the petitioner failed to depose before the Court despite repeated bailable warrants issued to him to which he could not offer any justification.

8. 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.”

9. 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

CRM-M-41188-2023 (O&M)

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.”

10. 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.”

11. Thereafter, 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.”

12. Recently, the Hon’ble Supreme Court in ***Manish Sisodia’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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, Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023 & Anr. Page 40 of 41 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.”

CRM-M-41188-2023 (O&M)

13. After hearing the learned counsels for the parties and considering the factual position of the present case and especially considering the fact that the petitioner is a widow of the age of 35 years and is having clean antecedents and more than 1 year and 1 month has elapsed after the framing of the charges that only one witness has been examined in part only, this Court is of the view that 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 and also in view of the aforesaid judgments of the Hon'ble Supreme Court of India on the issue. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

14. 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.

15. 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.

03.11.2023

*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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