

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-43422 of 2022

Date of Decision:03.07.2023

Sonu Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Atul Kaushik, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0192 dated 04.10.2019, under Section 22 of the NDPS Act, registered at Police Station Kotwali Bathinda, District Bathinda.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody from 04.10.2019 which is almost 3 years and 9 months. He submitted that it is a case where the petitioner has clean antecedents and is not involved in any other case and he has been falsely implicated in the present case by the police due to political enmity. He further submitted that the charges in the present case were framed on 07.03.2020 which is almost 3 years and 3 months and for about 23 times the case was adjourned for summoning of the prosecution witnesses but they

did not choose to appear and rather for two times the learned trial Court was constrained to issueailable warrants against the prosecution witnesses. He submitted that now only two prosecution witnesses have been examined who are none others but those witnesses who had only carried samples from one office to another office but no prosecution witness who is the material witness has been examined. None of the witnesses who were the part of the police party have been examined. After framing of the charges, the official witnesses did not choose to appear before the learned trial Court for more than three years which shows that the petitioner has been falsely implicated in the present case. He submitted that in view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply in the present case. Learned counsel has also referred to a judgment of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51 and also latest judgment of the Hon'ble Supreme Court in Mohd Muslim @ Hussain versus State (NCT of Delhi) 2023 AIR (SCC) 1648 and contended that the petitioner is entitled for the grant of regular bail under Article 21 of the Constitution of India.

3. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and the petitioner is in custody for about three years and nine months. He submitted that there had been a recovery of 9 kgs. and 605 grams of Tramadol and 864 grams of Alprazolam from the petitioner which falls in the category of commercial quantity and therefore the petitioner is not entitled for the grant of regular bail. He further submitted that so far as the antecedents of the petitioner is concerned, he is not involved in any other case as per the instructions

received from ASI Jaswinder Singh.

4. I have heard learned counsel for the parties.

5. The total incarceration of the petitioner is about three years and nine months and the charges were framed about three years and three months ago but only two prosecution witnesses have been examined and that too are those persons who had carried samples from one office to another office but none of the prosecution witnesses who are allegedly part of the police party or any recovery witness, if any, have been examined despite the fact that the learned trial Court had to adjourn the case for about 23 times and was also constrained to issue bailable warrants against the prosecution witnesses twice.

6. On a query being raised to learned State counsel during the course of arguments as to what was the justification for the prosecution witnesses for not having deposed before the Court for more than three years and three months after the framing of the charges, to which, on instructions from ASI Jaswinder Singh, submitted that there is no justification with regard to the same.

7. The Hon'ble Supreme Court in *Satender Kumar Antil's* case (supra) has dealt with the issue with regard to the repeated adjournments and its effect upon the Fundamental Rights of the accused. The relevant portion of para 40 of the aforesaid judgment is reproduced as under:-

“40. 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. In a recent judgment of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain versus State (NCT of Delhi)** (supra) the Hon'ble Supreme Court again reiterated that the delayed trial and the long custody is a factor which can be considered for grant of bail given peculiar facts and circumstances of each and every case. The relevant portion of the aforesaid judgment is 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 Malik¹⁹). 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 19 (2009) 2 SCC 624 14 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. Considering the totality of the facts and circumstances of the present case wherein the petitioner has already faced incarceration for about three years and nine months and is not involved in any other case, the bar contained under Section 37 of the NDPS Act will not apply in the present case. In the light of Article 21 of the Constitution of India, this Court is of the view that the petitioner deserves the concession of regular bail. 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.

10. At this stage it is pertinent to note that in a large number of cases the prosecution witnesses fail to depose before the Court for a long period of time and

for which there is no justification. In the absence of any justification in the present case, for not deposing for more than three years, the Senior Superintendent of Police, Bathinda is directed to look into the matter and also apprise the DGP with regard to the state of affairs and in case it is so required to take appropriate action in accordance with law.

11. 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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

July 03, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No