

218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 20.11.2023

(I) CRM-M-45037-2022

RAM SINGH @ RAMA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-51024-2022

RAVINDER SINGH @ BINDA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A. S. Brar, Advocate
for the petitioner in CRM-M-45037-2022.

Ms. Ramandeep Kaur, Advocate for
Mr. G. S. Sandhu, Advocate
for the petitioner in CRM-M-51024-2022.

Mr. Ramdeep Partap Singh, Senior DAG, 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.56 dated 16.04.2021, under Section 22 of the NDPS Act, registered at Police Station Dharamkot, District Moga, Punjab.

3. CRM-M-45037-2022 is a second regular bail petition, whereas CRM-M-51024-2022 is a third regular bail petition and as per the learned counsels for the petitioners, all the earlier petitions were dismissed as withdrawn.

4. Both the learned counsels for Ram Singh alias Rama (petitioner in CRM-M-45037-2022) and Ravinder Singh alias Binda (petitioner in CRM-M-51024-2022) submitted that both the petitioners are in custody from 16.04.2021, which is more than 2 years and 7 months and the charges in the present case were framed by the learned trial Court on 27.08.2021, which is more than 2 years and 2 months. They further submitted that both the petitioners have been falsely implicated in the present case in view of the fact that few years ago, they were involved in two more cases under the NDPS Act and it is the only reason as to why the petitioners have been falsely implicated. They also submitted that be that as it may, the charges in the present case were framed more than 2 years ago and as per the interlocutory orders passed by the learned trial Court, which have been supplied in Court today, the prosecution witnesses are not deliberately coming forth for deposition despite the fact that they are the police officials, who had set the criminal law into motion. They further submitted that a perusal of the aforesaid orders passed by the learned trial Court would show that at least twice bailable warrants were issued against

those police officials who had set the criminal law into motion but they did not care to depose before the Court. One of the witnesses, namely, ASI Sarabjit Singh was given up by the prosecution and till date only one prosecution witness has been examined, who is the DSP, who was called later on. They further submitted that although the DSP for the purpose of purported compliance of Section 50 of the NDPS Act has been examined but there is no justification as to why those police officials, who were part of the police party or even informant police officials did not care to depose before the Court with a result that after the framing of the charges by the learned trial Court, more than 2 years and 2 months have elapsed but only one prosecution witness has been examined and both the petitioners had to face incarceration for more than 2 years and 7 months for no fault of theirs. They 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 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. They also referred to another judgment of the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain versus State (NCT of Delhi) [2023 AIR (SC) 1648]**, wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. They also referred to a judgment of Hon'ble Supreme Court in **"Dheeraj Kumar Shukla versus The State of Uttar Pradesh", 2023 SCC Online SC 918** and also a recent judgment of Hon'ble Supreme Court in **Rabi Prakash versus State of Odisha, Special Leave to**

Appeal (Crl.) No.4169 of 2023 to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

5. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that more than 2 years and 2 months have elapsed and only one prosecution witness has been examined, who is the DSP, who was called for the purpose of Section 50 of the NDPS Act but none of the persons, who were part of the police party has been examined till date. He has however opposed the grant of regular bail to the petitioners on the ground that there has been a confiscation of 1010 tablets of *Tramadol* constituting 406.02 grams of *Tramadol*, which falls in the category of commercial quantity under the NDPS Act and therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

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

7. Both the petitioners are stated to be in custody from 16.04.2021, which is more than 2 years and 7 months and the charges in the present case have been framed by the learned trial Court on 27.08.2021, which is more than 2 years and 2 months. As per the learned counsel for the parties, only one prosecution witness has been examined, who is the DSP, who was called for the purpose of Section 50 of the NDPS Act. A perusal of the aforesaid zimni orders passed by the learned trial Court would show that at least twice bailable warrants were issued against the police officials, who constituted the police

party and had apprehended the petitioners but none of the police officials has been examined despite the fact that charges were framed more than 2 years ago.

8. 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 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. 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.

10. 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.”

11. Recently, the 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 long custody. The relevant portion of the aforesaid judgment 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.”

12. Therefore, considering the aforesaid totality, facts and circumstances of the present case and considering the long custody of the petitioners and the stage of trial and also the fact that the learned trial Court was constrained to issue bailable warrants against those witnesses who had set the criminal law into motion as they failed to appear thereafter for a long period of time, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to both the petitioners in the light of Article 21 of the Constitution of India as well as in the light of the aforesaid judgments of the Hon'ble Supreme Court.

13. Consequently, both the petitions are allowed. The petitioners shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petitions only.

(JASGURPREET SINGH PURI)
JUDGE

20.11.2023
Chetan Thakur

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