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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-43785-2023

Date of Decision: 12.09.2023

Deepak @ Dholu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shailender Singh Momi, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.8 dated 09.01.2021, under Sections 20/20A/61 of the NDPS Act, 1985, registered at Police Station Jhojhu Kalan, District Charkhi Dadri.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 2 years, 4 months and 28 days in total after excluding the period of interim bail granted to him. He further submitted that during the trial, the petitioner had been admitted to interim bail for five times on the ground that the mother of the petitioner is seriously ill and the petitioner had always surrendered well in time. He also submitted that it is a

case where the petitioner is having clean antecedents and is not involved in any other case and has been falsely implicated in the present case. He further submitted that in the present case, the allegations against the petitioner were with regard to recovery of 4 kgs. and 400 grams of *Charas*.

3. Learned counsel for the petitioner further submitted that earlier the petitioner had filed a bail petition before this Court in CRM-M-23550-2022 and the same was dismissed on 22.08.2022 on the ground that the petitioner was not able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act and more than one year has elapsed and only 5 witnesses have been examined till date. He further submitted that the aforesaid dismissal of the bail petition by this Court was assailed by the petitioner before the Hon'ble Supreme Court and the SLP (Criminal) was also dismissed by the Hon'ble Supreme Court on 14.12.2022 vide Annexure P-6 with a request to the trial Court to conclude the trial expeditiously. He also submitted that thereafter again, about nine months have elapsed and only three witnesses have been examined by the learned trial Court. He referred to the orders passed by the learned trial Court after the dismissal of the SLP by the Supreme Court which have been attached with the present petition as Annexure P-8 colly. and while referring to the same, he submitted that for a number of times, even the petitioner was not produced before the Court and for the purpose of examining the prosecution witnesses, the trial Court was constrained to issueailable warrants against them with the surety of sum of Rs.5,000/- and after such coercive steps being taken, still only 2 witnesses have been examined. He further submitted that if the petitioner is not produced in the Court by the police, then the

delay in trial is not attributable to the petitioner and it is the duty of the police and the jail authorities to produce the petitioner for which there is no justification with the prosecution.

4. 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 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 Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

5. On the other hand, Ms. Harpreet Kaur, learned AAG, Haryana has stated that it is correct that the petitioner has faced incarceration for 2 years, 4 months and 28 days and regarding which she has filed the custody certificate of the petitioner, which is taken on record. She further submitted that it is also correct that the petitioner has clean antecedents and is not involved in any other case. She however submitted that now five witnesses have been examined but the recovered quantity from the petitioner was 4 kgs. and 400 grams of *Charas*, 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.

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

7. It is a case where more than one year ago, the first bail petition of the petitioner was dismissed by this Court on the ground that the petitioner was not able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act. Thereafter, now the total custody of the petitioner is 2 years, 4 months and 28 days. The petitioner has attached the interlocutory orders passed by the learned trial Court after the dismissal of the SLP by the Hon'ble Supreme Court and a perusal of the same would show that even thereafter only two witnesses have been examined and coercive steps were taken by the learned trial Court to summon the prosecution witnesses, who are the police officials and who have set the criminal law into motion and bailable warrants have also been issued against them. Apart from the above, even for a number of times the petitioner was not even produced before the Court and for that a specific query was raised to the learned State counsel with regard to the justification to which she could not justify the same. This Court had raised a specific query to the learned State counsel with regard to the fact that as to why in the present case, the trial Court was constrained to issue bailable warrants against the prosecution witnesses and as to why they have not cared to depose before the Court, to which the learned State counsel after taking instructions from the police official who is present in Court today could not offer any justification or explanation in this regard.

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.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.”

9. Again, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** 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 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. Further recently, 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. In the present case, the total custody of the petitioner is 2 years, 4 months and 28 days. The petitioner is stated to be not involved in any

other case and has clean antecedents. The aforesaid interlocutory orders passed by the learned trial Court even after the dismissal of the SLP would show that the delay has occurred not at the fault of the petitioner. In addition to above, there is another factor which requires to be considered for the purpose of consideration of bail to the petitioner. It is so stated by the learned counsel for the petitioner that the mother of the petitioner is critically ill and for that purpose he was granted interim bail for five times and he had surrendered well in time. Therefore, considering the aforesaid totality of the circumstances of the present case, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner at this stage especially in the light of Article 21 of the Constitution of India and in the light of the aforesaid judgments passed by the Hon'ble Supreme Court.

13. 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.

14. 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.

12.09.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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