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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45855-2023
Date of decision: 06.12.2023

KARAM SINGH ALIAS SALU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Yajur Sharma, Advocate
for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.57 dated 30.04.2020, under Sections 21 and 29 of the NDPS Act, registered at Police Station Special Task Force, District SAS Nagar, Punjab.

2. Affidavit of Deputy Inspector General of Police, STF, Punjab dated 05.12.2023 has been filed by the learned State counsel in Court today, which is taken on record.

3. Learned counsel for the petitioner submitted that the petitioner is in custody for about 3 years, 7 months and 4 days and he is not involved in any other case and has clean antecedents. He further submitted that it is a case where the police received an information with regard to two persons, namely,

Punjab Singh and Suba Singh, which is so incorporated in the FIR and thereafter, on the basis of some other secret information, the name of the petitioner was nominated and he was arrested and on his disclosure statement, there was a recovery of 6 kgs. and 690 grams of *heroin* from the border of India and Pakistan. He also submitted that the aforesaid fields from where the aforesaid recovery was made does not belong to the petitioner and it was only on the basis of some secret information that the petitioner was picked up and then on his disclosure, the aforesaid quantity has been shown to be discovered. He further submitted that the petitioner has been falsely implicated in the present case. To substantiate his arguments, he submitted that in the present case the charges were framed on 22.12.2021 and almost 2 years have elapsed but no prosecution witness has been examined till date. He further submitted that the end result of the same is that the petitioner had to face incarceration for about 3 years, 7 months and 4 days for no fault of his but only because of the fault of the prosecution witnesses, who failed to depose before the learned trial Court. While referring to the aforesaid affidavit filed by Deputy Inspector General of Police, STF, Punjab, he submitted that after the framing of the charges, the matter was adjourned for 18 dates and even for 6 times, bailable warrants were issued and 2 times non-bailable warrants were issued to the Deputy Superintendent of Police, STF, Amritsar and on 9 occasions summons were issued to various other prosecution witnesses but they did not appear. He further submitted that in the meantime, one of the co-accused, namely, Amandeep Singh alias Mannu, from whose fields there was recovery of aforesaid contraband, had filed a petition before this Court for grant of regular bail, which was allowed on 28.07.2023 vide Annexure P-3 on the ground that

there was a delay in the trial and after the framing of the charges, not even a single prosecution witness was examined. He further submitted that at that point of time, only 1 year and 8 months had elapsed and now about 2 years have elapsed and still not even a single prosecution witness has been examined. He further submitted that the petitioner is also at parity with the aforesaid co-accused, namely, Amandeep Singh alias Mannu from whose fields the aforesaid contraband was recovered and there is no justification from the prosecution witnesses, who are the police officials and who had set the criminal law into motion as to why they did not turn up before trial Court till date. He further submitted that as per the aforesaid affidavit filed by the Deputy Inspector General of Police, STF, Punjab, after the regular bail was granted to the aforesaid co-accused vide Annexure P-3, the prosecution witnesses remained present in the Court but they could not be examined, once due to lack of time with the Court and for the second time, the accused was not produced before the Court. He further submitted that be that as it may, the prosecution witnesses were not examined but the incarceration of the petitioner has been perpetuated to such a long period of 3 years, 7 months and 4 days without even a single prosecution witness being examined till date. He has 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. He also referred to another judgment of 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. He further 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 judgment of Hon'ble Supreme Court in "Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) 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.

4. On the other hand, Mr. Luvinder Sofat, DAG, Punjab submitted that in pursuance of order passed by this Court on 01.12.2023, Mr. S. K. Rampal, DIG, STF, Mohali, Mr. Vishaljeet Singh, AIG, STF (Border Range), Amritsar and Mr. Vavinder Kumar, DSP, STF (Border Range), Amritsar are present in the Court today. He further submitted on instructions received from them that so far as the Deputy Superintendent of Police, STF (Border Range), Amritsar is concerned, disciplinary action has been taken against him for not deposing before the learned trial Court. He further submitted on instructions from the DIG, STF, Mohali that strict instructions have already been issued in the month of October, 2023 by the Director General of Police, Punjab with regard to the aforesaid problem of non-appearance of prosecution witnesses after the framing of the charges in the NDPS matters and especially when he is heading the Special Task Force. He also submitted that now sincere efforts and vigil is being maintained by him and constant reports are being called from the concerned nodal officers across the State of Punjab so that this problem of non-deposition of the prosecution witnesses before the Court in the NDPS matters is not perpetuated. Learned State counsel further submitted that after the issuance

of instructions by the Director General of Police, Punjab, a lot of improvement has been seen in this regard and it is hopeful that the said problem will be corrected very soon.

5. Learned State counsel on merits of the present case submitted that so far as the custody of the petitioner is concerned, the same is correct and he has filed custody certificate of the petitioner in the Court today and the same is taken on record. He further submitted that the petitioner is in custody for about 3 years, 7 months and 4 days and charges in the present case were framed on 22.12.2021, which is approximately 2 years ago but no prosecution witness has been examined till date. So far as the parity of the present petitioner with the aforesaid co-accused, namely, Amandeep Singh alias Mannu is concerned, he has not denied the same on the ground of custody. He submitted that the petitioner is not involved in any other case.

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

7. The present is a case where the petitioner is in custody for about 3 years, 7 months and 4 days and charges were framed by the learned trial Court on 22.12.2021, which is almost 2 years ago but not even a single prosecution witness has been examined till date. As per the aforesaid affidavit filed by the DIG, STF, Mohali, the matter was adjourned for 18 dates and for 6 times bailable warrants were issued and even 2 times non-bailable warrants were issued to the Deputy Superintendent of Police, STF, Amritsar and on 9 occasions summons were issued to various other prosecution witnesses but they did not appear before the Court for deposition. The aforesaid co-accused, namely, Amandeep Singh alias Mannu has already been granted the concession of regular bail by this Court on the same ground of custody vide Annexure P-3.

During the course of arguments, a specific query was raised to the learned State counsel as to why the prosecution witnesses have not deposed before the Court for a long period of almost two years after the framing of the charges, to which after receiving instructions from the concerned officers present in Court today, submitted that there is no valid justification for the same and it was because of this reason that now action is to be taken against the police officials in this regard. Be that as it may, now the custody of the petitioner comes out to be 3 years, 7 months and 4 days and not even a single prosecution witness has been examined.

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. The 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. After hearing learned counsel for the parties, this Court is of the view that it is a fit case for grant of regular bail to the petitioner especially on the ground of custody. The petitioner is stated to be not involved in any other case and has clean antecedents even as per the learned State counsel and as per the custody certificate filed in Court today. The petitioner is stated to be at parity with the aforesaid co-accused, namely, Amandeep Singh alias Mannu, who has already been extended the benefit of regular bail by this Court vide Annexure P-3. Therefore, this Court is of the view that in view of the aforesaid peculiar facts and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

13. Consequently, the present petition is allowed. The petitioner 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 petition only.

15. Before parting with this judgment, this Court would like to delve upon the issue with regard to non-deposition of prosecution witnesses for a long period of time resulting in long incarceration of accused. The criminal justice system in India has got a direct relationship with right to freedom which is guaranteed under the Constitution of India. Article 21 of the Constitution of India, which is contained in Part III of the Constitution of India is foundational and provides that no person shall be deprived of his life and personal liberty except by the procedure established by law. It is foundational in nature and is a part of Fundamental Rights. The police acts and performs its duty as per law but at the same time it is the duty of the Police Administration to have detailed and indepth knowledge of the Fundamental Rights of the citizens of India especially under Article 21 of the Constitution of India. It is extremely necessary to sensitize and to give proper learning to the police officers at least on Article 21 of the Constitution of India so that while performing their duties they should be aware of this most precious provision.

16. This Court earlier had an occasion to consider the aforesaid issue with regard to the Judicial Officers of the State of Punjab, Haryana and U.T., Chandigarh in *CRM-M-50125-2023* and had directed the Registrar General of

this Court and the Director of the Judicial Academy, Chandigarh to impart training to the Judicial Officers of the State of Punjab, Haryana and U.T., Chandigarh dedicated on the subject of Fundamental Rights only since the justice delivery system is also dependent upon Article 21 of the Constitution of India. The relevant portion of the aforesaid is reproduced as under:-

“27. Before parting with the judgement, this Court is of the view that there is a dire necessity of further enlightening the judicial officers of the States of Punjab, Haryana and UT, Chandigarh at District level due to dynamism in the scope of Article 21 of the Constitution of India. The Fundamental Rights as enshrined in Part III of the Constitution of India are fundamental to the rights of the citizens of India and some other persons as well and they are inherent and also part of the Basic Structure of the Constitution. The scope of Article 21 of the Constitution of India is dynamic and is not static in nature. It has now evolved over a period of time by various judicial precedents laid down by the Hon’ble Supreme Court of India that the right to life and personal liberty under Article 21 of the Constitution of India includes all varieties of life which go to make the personal liberty of a person and not merely the right to continuation of a person as an animal existence. The Fundamental Rights have always been put on a very high pedestal particularly in the light of Article 13 of the Constitution of India. The Constitution of India not only confers and guarantees various kinds of Fundamental Rights enshrined in Part III of the Constitution of India but also provides remedy for the aforesaid guarantee under Articles 32 and 226 of the Constitution of India.

28. The criminal justice system in India, especially the criminal Courts dispense justice and they are under an

obligation to always keep in their mind the Fundamental Rights of accused persons especially when they are undertrials and presumed to be innocent at that stage. For the purposes of considering bail matters, the Fundamental Rights especially under Article 21 of the Constitution of India have to be always kept in mind since the personal liberty of an individual is involved. Article 21 of the Constitution of India does not extend only to the citizens of India but it also extends to every person including foreign nationals. Therefore, the judicial officers of District Courts who every day deal with the personal liberty of accused persons should have full expertise not only on the practical aspects but also on the academic aspects pertaining to the Fundamental Rights since a balance has to be struck every time when any matter for grant of bail is considered. The judicial officers need to be imparted Orientation Course in this particular aspect in a proper manner in order to gain and enhance expertise.

29. In view of the above, the Registrar General of this Court shall coordinate with the Director of the Judicial Academy, Chandigarh for making all earnest efforts for arranging orientation course only on specialized subject of Fundamental Rights to all the judicial officers of District Courts across the States of Punjab, Haryana and UT, Chandigarh. Appropriate faculty, who are experts in the field of Constitutional Law be arranged and impetus has to be made on the topic of Fundamental Rights particularly and the Constitution of India in general. All the study material including law laid down by the Hon'ble Supreme Court of India and other High Courts shall also be made available for discussion."

17. This Court is of the view that even the police officers should also be given adequate training dedicated only on the chapter of Fundamental Rights and especially Article 21 of the Constitution of India since they are in day to day functioning and rather minute to minute functioning performing the duties which touch upon the freedom of life and liberty of the citizens of India. Article 21 of the Constitution of India not only protects the citizens of India but it also protects any other person irrespective of his/her nationality. Right of speedy trial is also a part of Article 21 of the Constitution of India. Deprivation of right of speedy trial due to carelessness, insensitiveness, malafide or any other reason on the part of police officers is unacceptable and violative of Article 21 of the Constitution of India. Therefore, even the police officers should also be imparted dedicated training by engaging appropriate faculty, who are experts in the field of Constitutional Law from any University or otherwise on the subject of Fundamental Rights.

18. In view of the above, the Director General of Police, Punjab is hereby directed to make a systematic schedule for imparting learning and education on Fundamental Rights especially Article 21 of the Constitution of India to all the police officers of the State of Punjab irrespective of their rank and cadre and they should be properly educated and sensitized on the rights pertaining to protection of right of life and personal liberty since they touch the lives of people. An appropriate faculty from an appropriate Institution or any such expert on the subject shall be hired for this purpose to impart training and lectures to the police officers along with all appropriate case law on the subject. It will be also appreciable if a short notebook etc. is prepared for their guidance

and even a short exam can also be made compulsory at least for the ranks upto the level of Deputy Superintendent of Police.

19. Compliance report be filed and Registry is directed to list this case for compliance after three months.

20. However, it is made clear that the aforesaid direction is only for the purpose of improvement of the criminal justice system and will not be deemed to mean any adverse observation against any police officer either of this case or any other case.

06.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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