

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M-47038-2023 (O&M)

Date of Decision: 22.09.2023

Sanjeev Kumar @ Sukar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Satnam Singh Gill, Advocate, for the petitioner.
Mr. S.S. Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.100, dated 24.09.2020, under Sections 22 of the NDPS Act, 1985 registered at Police Station Cheema, District Sangrur.
2. It is submitted by learned counsel for the petitioner that the petitioner is in custody for the last 2 years and 9 months and as per the allegation, a secret information was received with regard to the petitioner and one more person, co-accused namely Sunny Bhateja and acting upon the secret information, the police conducted raid and from the spot the aforesaid accused Sunny Bhateja was apprehended along with 800 tablets of *tramadol* but the petitioner was not even present at the spot even as per the prosecution story and it was after a period of three months that he was apprehended.

3. It is further submitted that even after the arrest of the petitioner, there was no recovery effected and he has been falsely implicated in the case only because of the fact that earlier he was facing trial in two cases under the NDPS Act. It is further submitted that now only 4 prosecution witnesses out of 19 have been examined and the delay in the trial was not attributed to the petitioner but because of the fault of the prosecution and be that as it may the total custody of the petitioner comes to 2 years and 9 months and in view of the aforesaid circumstances, his case may be considered for grant of regular bail.

4. Learned counsel for the petitioner refers to a judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil versus Central Bureau of Investigation and another* (2022) 10 SCC 51**, to contend 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.

5. He also referred to another judgment of Supreme Court in ***Dheeraj Kumar Shukla versus The State of Uttar Pradesh* (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)** and also a recent judgment of 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.

6. On the other hand, Mr. S.S. Cheema, learned DAG, Punjab submitted that although the petitioner has been in custody for the last 2 years and 9 months and there has been no recovery from the present petitioner, but there is recovery of 800 tablets of *tramadol* from the co-accused of the

petitioner which falls in the category of commercial quantity, the petitioner is not entitled for grant of regular bail. Learned State counsel further submitted that the petitioner is a habitual offender as he is involved in two other cases under the NDPS Act, in which he is facing trial. It is further submitted that although 4 witnesses have been examined and 2 witnesses have been examined-in-chief till date and since the trial of the case is going on, the petitioner does not deserve the concession of regular bail.

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

8. It is a case where the allegations are that the co-accused of the petitioner namely Sunny Bhateja was apprehended on the spot with 800 tablets of *tramadol*. The secret information was pertaining to both the accused, i.e. the aforesaid accused and the present petitioner. But even as per the prosecution case, the petitioner was not even present at the spot and he was arrested after a period of three months and later on there was no recovery effected in the present case. The petitioner is involved in two other cases under the NDPS Act in which he is an undertrial.

9. However, the petitioner has been in custody for 2 years and 9 months and 4 prosecution witnesses have been examined fully and 2 have been examined partially out of 19 witnesses.

10. The 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 under Article 21 of the Constitution of India. 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”.

11. 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.”

12. 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.”

13. In the facts and circumstances of the case, admittedly as per the prosecution case also the petitioner was not present at the spot and he was arrested after a period of three months and no recovery was effected from the petitioner. Apart from the aforesaid fact, the petitioner has already faced incarceration for 2 years and 9 months. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act is also not applicable in the light of Article 21 of the Constitution of India and also in light of the aforesaid judgments of the Supreme Court in **Satender Kumar Antil, Dheeraj Kumar Shukla and Rabi Prakash** cases (supra).

14. Therefore, considering the aforesaid totality and circumstances of the present case, 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.
15. 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.

September 22, 2023

vcgarg

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No