

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54025-2021 (O&M)
Date of Decision: 21.07.2023

(I)
Geeta Rao

Versus

....Petitioner(s)

State of Punjab

.....Respondent(s)

CRM-M-46583-2021 (O&M)

(II)
Rajesh Verma

Versus

....Petitioner(s)

State of Punjab

.....Respondent(s)

CRM-M-10746-2022 (O&M)

(III)
Mandeep Singh

Versus

....Petitioner(s)

State of Punjab

.....Respondent(s)

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Lalit K. Gupta Advocate,
for the petitioner in CRM-M-54025-2021.

Mr. D.S. Malwai, Advocate,
for the petitioner in CRM-M-46583-2021.

Mr. J.S. Warring, Advocate,

for the petitioner in CRM-M-10746-2022.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. All the three petitions are taken up together for final disposal with the consent of learned counsel for the parties since all the three petitions arise out of the same FIR and the prayer in all the three cases is for the grant of regular bail.

2. All the three 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. 63 dated 27.08.2021, under Sections 22(b), 29 of NDPS Act, registered at Police Station Thermal, District Bathinda, Punjab.

3. CRM-M-54025-2021 has been filed by petitioner Geeta Rao who is a lady of the age of 40 years. CRM-M-46583-2021 has been filed by petitioner Rajesh Verma and CRM-M-10746-2022 has been filed by petitioner Mandeep Singh. The allegations in the present FIR against all the three accused were that the police party had apprehended one Mandeep Singh, petitioner in CRM-M-10746-2022 who allegedly was on a motorcycle and on seeing the police party, he turned towards back side and fell down and there was a white colour transparent envelope hanging on his motorcycle which got torn and some tablets were seen on the floor and there had been alleged recovery from the floor to the extent of 750 tablets of Tramadol. During the course of investigation on the disclosure statement of petitioner Mandeep, the other petitioner, namely, Rajesh Verma was nominated and was arrested. On the basis of his own disclosure statement,

he got recovered 4000 tablets of Tramadol from a rented accommodation of one Surjeet Singh. On his interrogation, one other co-accused namely, Gagan Kumar was nominated from whom 10000 tablets of Tramadol Hydrochloride was recovered. On the basis of the disclosure statement of the aforesaid Gagan Kumar, the petitioner in CRM-M-54025-2021, namely, Geeta Rao was nominated and was arrested and from her there was a recovery of 135000 tablets of Tramadol Hydrochloride.

4. Learned counsel appearing on behalf of the petitioner Geeta Rao who is a lady of the age of 40 years has submitted that she is suffering from cancer and she had undergone chemotherapy from PGI and thereafter was subjected to repeated chemotherapies and consequently, she had earlier moved an application for grant of interim bail before this Court and this Court had granted interim bail on 13.12.2022 for a period of three months. Thereafter since she was repeatedly being subjected to chemotherapy treatment since more rounds were given to her, she moved an application for extension of interim bail and the same was again extended for a period of three months vide order dated 13.03.2023 which expired on 13.06.2023. However, due to vacations no application was moved for extension of the interim bail and as of date, she is still on interim bail. Learned counsel for the petitioner submitted that today the petitioner Geeta Rao has come present in the Court and therefore, she may be deemed to be in custody for the purpose of deciding the regular bail petition. Learned counsel further submitted categorically that he identifies the petitioner who is present in the Court.

5. Learned counsel for the petitioner Geeta Rao submitted that

even otherwise the petitioner was having a valid licence issued by the Drugs Controller vide Annexure P-3 and regarding which even a GST Certificate has been attached and has submitted that this issue as to whether she was entitled to possess the aforesaid tablets can be seen at the time of trial by way of adducing evidence but considering the custody of the petitioner which is 1 year and 3 months excluding the period of interim bail, she may be considered for the grant of regular bail. He further submitted that petitioner is not involved in any other case and has got clean antecedents.

4. Learned counsel appearing on behalf of petitioner Rajesh Verma in CRM-M-46583-2021 submitted that the name of the petitioner Rajesh Verma was nominated on the basis of disclosure statement of petitioner Mandeep Singh and there is no other connecting evidence available with the prosecution to connect the petitioner with the present offence. He submitted that the petitioner Rajesh Verma is not involved in any other case and has got clean antecedents. He further submitted that since it was a case where his name was nominated purely on the basis of disclosure statement of a co-accused and no connecting evidence was available with the prosecution, the disclosure statement of a co-accused is not admissible in evidence per se and he has also faced incarceration for 1 year and 10 months and the trial of the case is not progressing and therefore, he may be considered for the grant of regular bail.

5. Learned counsel appearing on behalf of petitioner Mandeep Singh submitted that the petitioner has been falsely implicated in the present case and there had been no recovery from the conscious possession of the petitioner since even as per the prosecution 7500 tablets were found

scattered after as per the prosecution the police party had stopped the motorcycle of the petitioner but there was no recovery from the possession of the petitioner. He further submitted that even as per the allegations, 7500 tablets were in a transparent envelop which is also highly improbable as in the natural course of events, no person would carry intoxicant tablets in a transparent envelop. He submitted that although the petitioner was involved in one more case under the NDPS Act in which he was convicted for 1 ½ months only and he had already undergone the same. He submitted that the petitioner Mandeep Singh is in custody for 1 year and 10 months and therefore, he may be considered for the grant of regular bail.

6. All the learned counsels appearing on behalf of the petitioners jointly submitted that it is a case where the charges were framed by the learned trial Court on 02.12.2021 which is almost 1 year and 8 months and till date no prosecution witness has been examined except for one prosecution witness who has been only partly examined on 12.07.2023. They submitted that for 1 year and 8 months no prosecution witness has come to the witness box to depose and the prosecution witnesses are the persons who are the police officials since it is a case pertaining to NDPS Act and these were the persons who had put the criminal law into motion and there is no justification for not deposing before the learned trial Court for long period of 1 year and 8 months after the framing of the charges and now when one of the witnesses was partly examined on 12.07.2023 and immediately the prosecution has now moved an application under Section 311 Cr.P.C for placing on record sample seal chits. All the learned counsels have also 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 is 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 of the Constitution of India has been discussed by taking a serious view with regard to long trial. They also referred to 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 the rights guaranteed under Article 21 of of the Constitution of India have an orverriding effect from Section 37 of the NDPS Act.

7. On the other hand, Mr. Rajiv Verma, learned DAG, Punjab has submitted that there is no dispute with regard to the custody of the petitioners and it is also correct that the charges were framed on 02.12.2021 and no witness has been examined till date except one who has been partly examined. He has however opposed the grant of regular bail to the petitioners on the ground that the confiscated quantity falls in the category of commercial quantity and, therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

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

9. The petitioner Geeta Rao who is suffering from medical ailment of cancer and is subject to chemotherapy repeatedly and is present in the Court today has also prayed for consideration for grant of regular bail. She is therefore deemed to be in custody since she is present in the Court and the

learned counsel for the petitioner has identified her. She is stated to be in custody for 1 year 3 months excluding the period of interim bail. Petitioners namely Rajesh Verma and Mandeep Singh are stated to be in custody for 1 year and 10 months. During the course of arguments, this Court had put a specific query to the learned State counsel as to what was the justification as to why for about 1 year and 8 months after the framing of the charges no prosecution witness has been examined and now on 12.07.2023 only one prosecution witness has been examined that also in part to which he could not given any justification. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue. 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”.

10. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. The relevant portion of the aforesaid judgment contained in para No.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.

11. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus***

State of Odisha (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. The petitioner namely Geeta Rao is suffering from medical ailment which is not controverted by the learned State counsel and she was granted interim bail on this ground earlier as she was suffering from cancer and subject to chemotherapy and is a lady. The petitioner Rajesh Verma was nominated on the basis of disclosure statement of a co-accused and from him there was alleged of 4000 tablets of Tramadol and he is stated to be not involved in any other case. The petitioner Mandeep Singh is also in custody for 1 year and 10 months and as per the allegations, there was no recovery from his conscious possession but from the floor where the tablets were scattered as per the police story.

13. This Court would not go into the merits of the allegations involved but only for the purpose of considering the effect of Section 37 of the NDPS Act upon the present petitioners, the reference which has been

made by the learned counsels for the petitioners on the aforesaid judgments is well placed since no justification has come from the learned State counsel as to why for about 1 year and 8 months after the framing of the charges, no prosecution witness has been examined, this Court is of the considered view that considering the totality of facts and circumstances of the present case and in the light of Article 21 of the Constitution of India, all the three petitioners deserve the concession of regular bail.

14. In view of the above, all the three petitions are allowed. All the three petitioners shall be released on regular bail subject to furnishing bail bonds/surety 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 merits of the case and is meant for the purpose of deciding the present petitions only.

21.07.2023
rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No