

CRM-M-47411-2023

251

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

CRM-M-47411-2023
Date of Decision: 06.11.2023

Kamaljit Singh @ Kamal

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Davinder Bir Singh, Advocate
for the petitioner.

Mr. H.S. Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.32 dated 28.02.2021, under Sections 21, 29, 27 & 25 of the NDPS Act, 1985, registered at Police Station Special Task Force, District STF Wing, SAS Nagar (Mohali) having jurisdiction at District Ludhiana.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 28.02.2021 and earlier he was granted interim bail by a Co-ordinate Bench of this Court twice and after excluding the total period of interim bail his custody comes out to be 2 years and 7 months. He further submitted that earlier for the first time the petitioner was granted interim bail by the Co-ordinate Bench of this Court on the ground that the father of the petitioner was suffering from Cancer and now his father has passed away, but the petitioner surrendered well in time. Thereafter, he

CRM-M-47411-2023

was again granted interim bail by the Co-ordinate Bench of this Court on the ground that his aged mother was suffering from illness and thereafter also, he surrendered well in time. He submitted that in this way, the total custody of the petitioner comes out to be 2 years and 7 months and now the 4 prosecution witnesses have been examined till date out of 32 cited witnesses despite the fact that the charges were framed on 05.07.2022, which is almost 1 year and 4 months ago.

3. Learned counsel for the petitioner further submitted that the petitioner has clean antecedents and is not involved in any other case and has been falsely implicated in the present case on the basis of political rivalry. He also submitted that although his name has figured in the FIR that a secret information was received by the police that the petitioner along with the other co-accused were dealing with the business of *Heroin*, but so far as the present petitioner is concerned, he is not involved in any other case whatsoever and he has been falsely implicated only because of the political rivalry. In order to substantiate his arguments, he referred to the interlocutory orders which have been passed by the learned trial Court and photocopies of the same have been produced before this Court and while referring to the same, submitted that after the framing of charges on 05.07.2022, repeatedly summons and bailable warrants were issued to the prosecution witnesses, who are the police officers who did not care to depose before the Court and for a number of times, bailable warrants were issued against the prosecution witnesses. He also submitted that even serious note was taken by the learned trial Court as to why the prosecution witnesses are not appearing before the Court. He further submitted that even till date, the I.O. of the present case has not been examined.

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 also referred to the latest judgment of the Hon'ble Supreme Court passed in *Special Leave to Appeal (Criminal) No.8188 of 2023* "Manish Sisodia Vs. Central Bureau of Investigation" decided on 30.10.2023 and contended that keeping in view the aforesaid long custody period of the petitioner which comes out to be 2 years and 7 months, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

5. On the other hand, Mr. H.S. Sitta, learned DAG, Punjab submitted that so far as the custody of the petitioner is concerned, the same is correct. He further submitted that it is also correct that earlier twice the petitioner was granted interim bail on the ground of illness of his parents and he surrendered well in time. He also submitted that the petitioner is not involved in any other case as per his instructions. He, has however, opposed the grant of regular bail to the petitioner on the ground that there was a recovery of 2 kgs. and 17 grams of *Heroin* from the petitioner and the co-accused, 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 the total custody of the petitioner after

excluding the period of interim bail comes out to be 2 years and 7 months. The charges were framed on 05.07.2022 and as per the interlocutory orders as referred to by the learned counsel for the petitioner that for a number of times, bailable warrants were issued against the prosecution witnesses, who are the police officials and till date even the I.O. has not been examined although 4 witnesses have been examined in the present case. The petitioner is stated to be having clean antecedents and is not involved in any other case as per the learned counsels for the parties.

8. During the course of arguments, a specific query was raised to the State counsel as to what was the justification as to why the trial Court was constrained to issue bailable warrants repeatedly and taking strict note of non-deposing of prosecution witnesses to which he could not offer any explanation.

9. 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.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.”

10. The Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also 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."

11. 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."

12. Thereafter, the Hon'ble Supreme Court in ***Rabi Prakash's case***

CRM-M-47411-2023

(*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.”

13. Recently, the Hon’ble Supreme Court in *Manish Sisodia’s case* (*Supra*) has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023 & Anr. Page 40 of 41 mass violence, etc. Neither is

CRM-M-47411-2023

this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

14. In view of the aforesaid facts and circumstances especially considering the long custody of the petitioner which is 2 years and 7 months, the illness of the mother of the petitioner and the fact that twice the petitioner was granted interim bail and he surrendered well in time, this Court is of the view that the delay in the trial was not at the behest of the petitioner but was because of the non-deposition of the prosecution witnesses and therefore, the bar contained under Section 37 of the NDPS Act will not apply to the 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 of India.

15. Considering the aforesaid totality of the circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner. 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.

16. 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.

06.11.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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