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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50682-2022
Date of decision: 06.11.2023

VIKRAM SINGH

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Pratap Singh Gill, 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 the grant of regular bail to the petitioner in FIR No.222 dated 15.05.2021, under Section 420 of the IPC and Section 22-C of the NDPS Act, registered at Police Station Civil Line Kaithal, District Kaithal, Haryana.

2. Reply has been filed by way of an affidavit of the Deputy Superintendent of Police (HQ), Kaithal by the learned State counsel in Court today and the same is taken on record. Copy has been supplied to learned counsel for the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner is in custody from 15.05.2021, which is almost 2 years and 6 months. He further

submitted that 6 prosecution witnesses have been examined out of total cited 20 prosecution witnesses and the allegations against the petitioner were that on the basis of information, the police had recovered 207 tablets of Addnok-N^{NRX} Buprenorphine 2 mg and Naloxone 0.5 mg having a total weight of 22.77 grams from him and another co-accused. He also submitted that the commercial quantity as defined under the NDPS Act pertaining to salt of Buprenorphine is 20 grams and in the present case, it was marginally higher than the aforesaid commercial quantity. He further submitted that there were two accused in the present case including the petitioner from whom there was an alleged recovery of the aforesaid tablets. He further submitted that the petitioner is not involved in any other case under the NDPS Act but earlier he was a user of narcotics but for the purpose of rectifying his drug habits, he had to use tablets of Buprenorphine for medicinal purposes, which is so advisable as per scientific research. He also submitted that now there is a settled scientific research that for the purpose of withdrawal from drug addiction, doses of Buprenorphine are required. He referred to Rule 66 of the NDPS Rules, 1985 to contend that upto 100 doses can be kept without any medical prescription and more than 100 doses can be kept under the medical prescription. He further submitted that the aforesaid tablets of Buprenorphine were 207 in number which were kept allegedly by two persons including the petitioner and therefore, even otherwise also the same would be about 100 doses per person. But even if it is considered that the total tablets were more than 100 qua the petitioner, still the dose of one Buprenorphine tablet would be two at one point of time. He also submitted that reference may also be made to a judgment of this Court in **Sukhwinder Singh**

alias Vicky versus State of Punjab, 2021 (1) R.C.R. (Criminal) 177 in this regard, wherein it was held that when the dosage is less than 100 and used for medicinal purposes then Rule 66 of the NDPS Rules, 1985 will apply and the provisions of Section 37 of the NDPS Act will not apply. He further submitted that the petitioner is not a habitual offender and he is not involved in any other case under the NDPS Act but involved in one more case under the Excise Act and two cases under the IPC. He also submitted that even otherwise also the total custody of the petitioner in the present case is about 2 years and 6 months and the trial of the case is going at a very slow pace and considering the custody of the petitioner as well, he may be considered for grant of regular bail. He referred to judgments of Hon'ble Supreme Court in "Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51 and "Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023 and a latest judgment of Hon'ble Supreme Court in Manish Sisodia versus Central Bureau of Investigation, arising out of Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023 in this regard.

4. On the other hand, Ms. Harpreet Kaur, AAG, Haryana submitted that so far as the custody of the petitioner is concerned, the same is correct and now 6 prosecution witnesses have been examined. She has however opposed the grant of regular bail to the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the antecedents of the petitioner are concerned, she submitted that the petitioner is not involved in any other case under the NDPS Act.

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

6. The petitioner has faced incarceration for about 2 years and 6 months. During the course of arguments, learned counsel for the petitioner has referred to Annexure P-6, which is the medical record of the petitioner, whereby he was earlier a drug addict and was seeking treatment in Barkat De-addiction and Counselling Centre, Arjun Nagar, Kaithal and as per learned counsel for the petitioner, he was on his withdrawal symptoms and may have been taking Buprenorphine for his own personal consumption. The total tablets in the present case are stated to be 207 allegedly recovered from two persons including the petitioner. This Court would not go into the details with regard to the number of dosages because the same has not been so specifically argued by the learned counsel for the petitioner but considering the background of the petitioner, whereby he is not involved in any other case under the NDPS Act and he appears to be a drug addict and may have been using Buprenorphine for his own personal consumption, this Court would therefore go only into the aspect of long custody of the petitioner which is stated to be about 2 years and 6 months and without commenting as to whether petitioner was consuming those tablets or not.

7. 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”.

8. 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.”

9. Recently, the Hon'ble Supreme Court in **Manish Sisodia's case** (**supra**) has observed as under:-

“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, mass violence, etc. Neither is 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.”

10. Therefore, considering the aforesaid totality and circumstances of the present case and also considering the custody of the petitioner which is stated to be about 2 years and 6 months and as per the learned State counsel, only 6 prosecution witnesses have been examined till date and 14 prosecution witnesses are remaining to be examined, this Court is of the view that in the light of Article 21 of the Constitution of India as well as aforesaid judgments, the provisions of Section 37 of the NDPS Act will not apply and especially in view of the fact the total recovered quantity from two accused including the petitioner is marginally higher than the commercial quantity, the petitioner deserves the concession of regular bail.

11. 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.

12. 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.

06.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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