

CRM-M-51430-2022 and
CRM-M-55306-2022

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2023:PHHC:134431

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 16.10.2023

(I) CRM-M-51430-2022

ABHISHEK

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-55306-2022

MONU SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. P. S. Ahluwalia, Advocate and
Mr. H. S. Randhawa, Advocate
for the petitioner in CRM-M-51430-2022.

Mr. Vishal Sharma, Advocate
for the petitioner in CRM-M-55306-2022.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

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

2. Both these 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.216 dated 24.04.2022, under Sections 21, 29, 61 and 85 of the NDPS Act, registered at Police Station Zirakpur, District SAS Nagar, Punjab.

3. Both the learned counsels appearing on behalf of the petitioners in both the cases have submitted that the allegations in the present case were that the police apprehended both the petitioners on the spot while they were sitting in a car on the rear seat and from them there was a recovery of 346 grams of *heroin* in a packet. They further submitted that it is a case where both the petitioners have clean antecedents and they are not involved in any other case and have been falsely implicated in the present case.

4. Learned counsel appearing on behalf of Abhishek (petitioner in CRM-M-51430-2022) submitted that as far as petitioner-Abhishek is concerned, he is holding a commercial vehicle and the police on its own falsely implicated him as well as other co-accused in the present case. He further submitted that rather petitioner-Abhishek is suffering from Tuberculosis and he is under treatment with regard to the same.

5. Both the learned counsels for the petitioners further submitted that both the petitioners are in custody from 24.04.2022, which is almost 1 year and 6 months and the charges in the present cases were framed on 15.09.2022 and almost 1 year and 1 month have elapsed after the framing of the charges and not even a single prosecution witness has been examined despite the fact that about 18 times the Judge, Special Court, SAS Nagar, Mohali, adjourned the case only for the purpose of summoning the prosecution witnesses and rather on the last

two dates of hearing even bailable/non-bailable warrants were also issued and they were bound down but despite the fact that bailable/non-bailable warrants have been issued they did not care to depose before the Court. They also submitted that the net result of the same was that both the petitioners had to face incarceration for about 1 year and 6 months only due to the fault of the prosecution witnesses and there is no justification as to why they did not care to depose before the Court for long 18 adjournments and summoning being issued by the learned trial Court. They have 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 affected. They 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. They 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 recent 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.

6. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that after the framing of charges on 15.09.2022, not even a single prosecution witness has been examined. He further submitted that so far as the antecedents of both the petitioners are concerned, he has instructions to state that both the petitioners are not involved in any other case.

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

8. It is a case where both the petitioners are stated to be in custody from 24.04.2022, which is almost 1 year and 6 months and they have clean antecedents and not involved in any other case. During the course of arguments, learned counsel for petitioner-Abhishek has supplied photocopies of the interlocutory orders passed by the learned trial Court after the framing of the charges on 15.09.2022, which reveals that for about 18 times the matter was adjourned by the learned trial Court by repeatedly summoning the prosecution witnesses and even on the last two dates of hearing, bailable/non-bailable warrants have also been issued but till date not even a single prosecution witness has been examined. On a query being raised to the learned State counsel as to what was the justification for the prosecution witnesses, who are none other but the police officials and who had set the criminal law into motion themselves are not deposing before the learned trial Court despite repeated summons and bailable/non-bailable warrants being issued by the learned trial Court, to which he could not offer any justification or any reason with regard to the same.

9. 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”.

10. 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.

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 view of the aforesaid facts and circumstances, this Court is of the view that considering the factual position as stated above, wherein for about 1 year and 1 month after the framing of charges, the prosecution has failed to get any of the prosecution witnesses examined despite about 18 adjournments after the charges were framed and even bailable/non-bailable warrants were also issued by the Judge, Special Court, SAS Nagar, Mohali, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to both the petitioners in the light of Article 21 of the Constitution of India.

14. Consequently, the present petitions are allowed. Both the petitioners 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 petitions only.

16.10.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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