

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-51309 of 2022

Date of Decision:13.04.2023

Harwinder Singh @ Talli

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

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.05 dated 13.01.2021, under Section 22(C) of the NDPS Act, registered at Police Station Nahianwala Bathinda, District Bathinda.

It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 13.01.2021, which is almost two years and three months. He submitted that the investigation of the case has already been completed and thereafter the report under Section 173 of the Code of Criminal Procedure has been submitted to the competent Court and thereafter charges were framed on 08.07.2021 and after that trial has commenced. It is almost 1½ years that repeatedly summons, bailable warrants and non-bailable warrants issued against

the prosecution witnesses who are the police officials at whose instance the present FIR was lodged and who had set the criminal law into motion. He submitted that the petitioner has clean antecedents and is not involved in any other case. He submitted that it is a case where the petitioner has been falsely implicated by the police by planting a case upon the petitioner where recovery of 9000 tablets of Tramadol and it was only because of the result of political enmity.

Learned counsel for the petitioner during the course of arguments has supplied the photostat copies of the zimni orders which were passed by the learned trial Court after framing of the charges till date. The aforesaid photostat copies are hereby taken on record as Mark-X. While referring to the aforesaid orders, he submitted that after framing of the charges on 08.07.2021 which is almost 1½ years, the matter was adjourned for 17 times and almost every time summons, bailable warrants and non-bailable warrants were issued to the police officials who had set the criminal law into motion and to be precise for ten times bailable warrants were issued, for seven times non-bailable warrants were issued and even on one occasion the learned trial Court had directed that red note be put on the summons/warrants and the concerned SHO was directed to ensure the service of witnesses. He submitted that despite repeated summons and warrants issued to the police officials/witnesses who are the prosecution witnesses, they did not choose to appear before the Court for deposing and there is no justification for the same. He submitted that in fact since the petitioner was falsely implicated, these official witnesses despite being served did not appear before the learned trial Court for deposing and the result of the same was that the petitioner had to face incarceration for two years and three months which included 1½ years after the framing of the

charges for no fault of the petitioner.

Learned counsel for the petitioner further referred to a judgment of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51 to contend that repeated adjournments in such like cases directly effects the fundamental rights of an accused under Article 21 of the Constitution of India and he also referred to a latest judgment of the Hon'ble Supreme Court in Mohd Muslim @ Hussain versus State (NCT of Delhi) Criminal Appeal No.943/2023, date of decision 28.03.2023 to contend that to a case like of the present case the bar under Section 37 of the NDPS Act will not apply especially considering the long custody of the petitioner and repeated adjournments in the learned trial Court. He has therefore prayed that the petitioner may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted, on instructions from the SHO Tarundeep Singh, Investigating Officer, that it is correct that the petitioner is in custody for two years and three months out of which 1½ years is after the framing of the charges since the charges were framed on 08.07.2021. She submitted that one prosecution witness has already been examined. However, the said witness is a formal witness who had deposited the samples. She further submitted that the petitioner has clean antecedents and is not involved in any other case. She has however opposed the grant of bail to the petitioner on the ground that since the quantity recovered in the present case was a commercial quantity under the NDPS Act and therefore the prayer of the petitioner would be hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

The petitioner has already faced incarceration for two years and three months. As per learned counsel for the parties, the petitioner is not involved in any other case. In the present case charges were framed on 08.07.2021 and only one witness has been examined who is stated to be a formal witness who had deposited the samples in the laboratory. No other witness who are either the members of the police party or other material witnesses have been examined till date.

A perusal of the zimni orders which have been supplied by learned counsel for the petitioner today in the Court as Mark-X would show that almost on every date either bailable warrants or non-bailable warrants were issued or even bailable warrants of some of the prosecution witnesses and non-bailable warrants of other witnesses have been issued repeatedly and for ten times bailable warrants and for seven times non-bailable warrants were issued and on one occasion even red note was put on the summons/warrants with a direction to the SHO concerned to effect the service.

During the course of arguments, this Court had raised a specific query to learned State counsel, as to what was the justification with regard to the non-deposing of the prosecution witnesses who had set the criminal law into motion to which she could not give any justification. The law with regard to repeated adjournments and its effect upon the fundamental rights of the accused has been so discussed by the Hon'ble Supreme Court in *Satender Kumar Antil's* case (supra). The relevant portion of 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”. ”

In a recent judgment of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain versus State (NCT of Delhi)** Criminal Appeal No.943/2023, date of decision 28.03.2023, the Hon'ble Supreme Court again reiterated that the delayed trial and the long custody is a factor which can be considered for grant of bail given peculiar facts and circumstances of each and every case and the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment is 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 Malik¹⁹). 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 19 (2009) 2 SCC 624 14 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."

From the aforesaid facts and circumstances of the present case and particularly considering the fact that the petitioner has clean antecedents and no justification has come forth as to why for large number of dates the prosecution witnesses did not care to depose before the learned trial Court despite repeated bailable and non-bailable warrants being issued, the circumstances would lead this Court to have a *prima facie* view at least at this stage and only for the purpose of considering the grant of bail to the petitioner that the petitioner is not guilty of an offence.

So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, both the learned counsel for the parties have stated that the petitioner has clean antecedents and is not involved in any other case. Apart from the same, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Hence, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied and therefore the bar contained under Section 37 of the NDPS Act will not apply in the present case especially considering the aforesaid facts and circumstances and also in the light of Article 21 of the Constitution of India.

In view of the facts and circumstances as narrated above and especially considering the long custody of the petitioner, this Court is of the view that the petitioner deserves the concession of regular bail. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

April 13, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No