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

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**CRM-M-51688-2022**

**Date of Decision: 18.04.2023**

Kuldeep Kumar alias Bijli

..... Petitioner

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Swarn Tiwana, Advocate,  
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

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**JASGURPREET SINGH PURI, J. (ORAL)**

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.24 dated 08.03.2021, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Division No.1, Ludhiana, District Police Commissionerate, Ludhiana.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 08.03.2021, which is more than 2 years and 1 month and the charges in the present case were framed by the learned trial Court on 09.08.2021 which is also more than 1 year and 8 months ago but till date no prosecution witness has been examined except for SI Maninder Kaur, who has been partly examined and thereafter, she did not care to depose before the Court. He further submitted that although the petitioner is involved in one more case under the NDPS Act in which he is already on

bail but in that there was no recovery effected from the conscious possession of the petitioner and he was nominated on the basis of the disclosure statement of the co-accused and it was only because he was earlier involved in that case, he was falsely implicated in the present case and the allegations against the petitioner were with regard to recovery of 345 grams of *Tramadol* from him.

Learned counsel for the petitioner further submitted that it is a case where the petitioner has been falsely implicated which can be substantiated from the facts and circumstances of the present case. During the course of arguments, the learned counsel supplied the photocopy of the zimni orders which were passed by the learned trial Court after the framing of the charges on 09.08.2021. The aforesaid zimni orders as supplied by the learned counsel for the petitioner are taken on record and marked as 'X'. While referring to the aforesaid zimni orders, he submitted that on 09.08.2021, the charges were framed against the petitioner and thereafter, the learned trial Court had adjourned the trial for about 16 times out of which for 6 times bailable warrants were issued against the prosecution witnesses, who are the police officials, who had themselves set the criminal law into motion. He further submitted that even at the initial stages the police officials were served and the bailable warrants were also issued at the initial stages. He also submitted that even on one date, when the prosecution witnesses were not appearing, the learned trial Court issued notice to the witnesses as to why action may not be taken against them. The learned trial Court had also recorded that even despite service the prosecution witnesses are not coming forward for deposing before the Court and therefore, it

appears that the learned trial Court was constrained to adjourn the matter from time to time and to issueailable warrants repeatedly to those persons who had set the criminal law into motion and there is no justification with regard to the same. He further submitted that the conduct of the police officials for not deposing before the Court is sufficient to state that the petitioner was falsely implicated in the present case and particularly in the absence of any justification in this regard.

Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in "**Satender Kumar Antil Vs. Central Bureau of Investigation and another**", 2022(10) SCC 51, to contend that the Hon'ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the right to life under Article 21 of the Constitution of India. He also referred to a latest judgment of the Hon'ble Supreme Court passed in **Criminal Appeal No.943 of 2023** titled as "**Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**" decided on 28.03.2023 to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted given facts and circumstances of each and every case. He further submitted that one of the witnesses, namely, ASI Gurmit Singh was examined in part on 20.08.2022 and thereafter, for about 5 times the matter was adjourned and he did not appear for cross-examination and rather the trial Court had repeatedly summoned him for the purpose of cross-examination which shows that deliberately the prosecution witnesses are not appearing for deposition, and therefore, the petitioner may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for almost 2 years and 1 month and after the framing of the charges on 09.08.2021, only one witness has been examined and that too in part. She has however opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act and the recovered quantity from the petitioner falls under 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.

I have heard the learned counsel for the parties.

The present is a case where the petitioner has faced incarceration for more than 2 years and 1 month and the charges were framed on 09.08.2021, which is more than 1 year and 8 months ago. A perusal of the zimni orders which have been supplied by the learned counsel for the petitioner today marked as 'X' would show that for 16 times the trial Court had to adjourn the case after the framing of the charges just to secure the attendance of the prosecution witnesses who are the police officials, who had set the criminal law into motion. At the initial stages, some of the prosecution witnesses were served but they did not turn up for deposition and therefore, the learned trial Court was constrained to issueailable warrants against them for about 6 times and even on one date, a notice was also issued to one of the prosecution witnesses as to why action may not be taken against him for not coming forward for deposition.

During the course of arguments, this Court raised a query to the learned State counsel that as to what was the justification as to why in the

present case the prosecution witnesses did not turn up despite repeated summons and 6 times bailable warrants issued against them, to which she could not offer any explanation. Even at one stage before the learned trial Court, one of the prosecution witnesses, namely, ASI Gurmit Singh was examined in part but thereafter, again for about 4-5 times, he did not choose to appear for cross-examination and again the learned trial Court was compelled to pass an order for summoning the aforesaid witness.

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.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.”*

Now recently, Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the issue with regard to delay in trial and 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 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 Malik<sup>19</sup>). 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.”*

In the facts and circumstances of the present case, no justification has come forth from the State Counsel with regard to evading of the process by the police officials who themselves have set the criminal law into motion and the result of the same is that the petitioner had to face incarceration for more than 2 years and 1 month for no fault of his. Therefore, considering the custody of the petitioner and the conduct of the police officials, this Court has got no other option except to draw an adverse inference against the prosecution which would lead this Court to have a *prima facie* view that at least at this stage only for the purpose of considering the prayer of regular bail that the petitioner is not guilty of offence. Furthermore, it is not the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on regular bail then he may repeat the offence or may abscond or flee from justice or he may influence the witnesses. Therefore, both the ingredients for making a suitable departure from the bar contained Section 37 of the NDPS Act remain satisfied.

Apart from the above, in view of the aforesaid judgment of the Hon’ble Supreme Court passed in *Mohd. Muslim @ Hussain's case (supra)*, the custody of the petitioner considering the facts and circumstances of the present case, would also become a ground for making a departure from the aforesaid bar contained under Section 37 of the NDPS Act.

Therefore, considering the aforesaid totality of the facts and circumstances of the present case especially in the light of the long custody of the petitioner and in the light of Article 21 of the Constitution of India, the present petition deserves to succeed.

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.

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.

18.04.2023  
*Bhumika*

(JASGURPREET SINGH PURI)  
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable:        | Yes |