

227

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50436-2023 (O&M)

Date of Decision: 08.12.2023

Angrej Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.K. Singla, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 146 dated 27.07.2022, under Sections 22 and 27 of NDPS Act, registered at Police Station City 2, Mansa, District Mansa.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 27.07.2022 which is more than 1 year and 4 months. He submitted that the allegations against the petitioner were with regard to confiscation of 1180 tablets of Alprazolam of a total weight of 145 grams whereas the commercial quantity as defined under the NDPS Act is 100 grams. He submitted that the present case was planted upon the petitioner and in fact he is having clean antecedents and is not involved in any other case except for one matrimonial case under Section 498A IPC. He further

submitted that the charges in the present case were framed by the learned trial Court on 02.02.2023 and now more than 10 months have elapsed but no prosecution witness has been examined except for two formal witnesses who were only sample carriers and none of the prosecution witnesses who were the part of the police party or recovery witness has been examined despite the fact that repeatedly summons and bailable warrants were issued to the material witnesses who had put the criminal law into motion. He submitted that considering his clean antecedents and also considering his custody, he may be considered for the grant of regular bail. He also referred to the judgments of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51], *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648], *Dheeraj Kumar Shukla v. The State of Uttar Pradesh*, 2023 SCC Online SC 918 and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, learned AAG, Punjab has submitted that it is correct that the petitioner is in custody for more than 1 year and 4 months and he is not involved in any other case except for one case under Section 498A IPC. He has however submitted that since the recovery from the petitioner was of about 145 grams of Alprazolam salt which falls in the category of commercial quantity, he is not entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration for more than 1 year and 4 months. The petitioner is stated to be not involved in any other case except for one case under Section 498A IPC.

During the course of arguments, the learned counsel for the petitioner has referred to copies of the zimnis orders passed by the learned trial Court after the framing of the charges and submitted that for number of times the adjournments were made by the learned trial Court and repeatedly summons were issued to the prosecution witnesses and even bailable warrants were also issued but those material witnesses who had put the criminal law into motion did not care to depose before the Court. However, lately two witnesses have been examined who were only formal witnesses and sample carrier. On a query being raised to the learned State counsel as to what was the justification with regard to the same to which he could not offer any satisfactory reply. Therefore, considering the fact that the quantity confiscated in the present case is of commercial quantity, the bar Section 37 of the NDPS Act would also be considered. The petitioner is stated to be in custody for more than 1 year and 4 months.

6. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of 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”.

7. The Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with the issue pertaining to delay in the trial *vis-a-vis* bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.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.

8. 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.”

9. The Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (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.

10. After hearing the learned counsel for the parties, this Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the custody of the petitioner and the stage of the trial and the conduct of the prosecution witnesses where the material witnesses did not choose to appear despite repeated summons being issued and bailable warrants were also issued against them, 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.

11. 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.

12. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

08.12.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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