

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CRM-M-52218 of 2022

Date of Decision:17.04.2023

Sanam Deep Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L. S. Sekhon, 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.23 dated 13.03.2021, under Sections 22 and 29 of the NDPS Act, registered at Police Station Sadar Ahmedgarh, District Malerkotla.

It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 13.03.2021, which is more than two years and one month and the charges in the present case were framed on 12.04.2022 which is also one year ago and after that trial has commenced but no prosecution witness has been examined till date. 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 due to the political enmity. He further

submitted that although the allegation against the petitioner was with regard to recovery of 990 tablets of Celcidal-100 SR having a salt of Tramadol which falls within the commercial quantity under the NDPS Act but the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the peculiar facts and circumstances of the present case.

Learned counsel for the petitioner submitted that as per the prosecution, the police party saw the petitioner and thereafter the petitioner threw away a bag and thereafter the strips of tablets scattered on the road which were collected by the police and immediately the petitioner was arrested. He submitted that there had been no recovery from the conscious possession of the petitioner and on the face of it a false case has been planted against him. He submitted that in fact the aforesaid submission is not only substantiated but even fortified from the fact that for more than one year has elapsed after the framing of the charges that the prosecution witnesses did not even care to depose before the Court despite the fact that the trial court had to adjourn the case for about 18 times regarding which the zimni orders have been attached alongwith the present petition as Annexure P-2 to P-27 and the remaining zimni orders have also been produced before this Court and the aforesaid photostat copies are hereby taken on record as Mark-X. He submitted that the prosecution witnesses were summoned right from the beginning and thereafter for five times the trial court was constrained to issueailable warrants against the prosecution witnesses who had set the criminal law into motion. He submitted that the prosecution witness namely Constable Shehbaz Khan who was the part of the police party was summoned throughailable warrants for a number of times but he did not care to depose before the Court and

similarly SI Amandeep Kaur was also summoned. He submitted that no justification has come forth as to why the police officials who have themselves set the criminal law into motion are evading the process of the Court and the result of the same is that the petitioner had to face incarceration for more than two years.

Learned counsel for the petitioner 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 the 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 made by 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 police official who is present in the Court, that it is correct that the petitioner is in custody since 13.03.2021 which is more than two years and the charges were also framed about one year ago i.e. on 12.04.2022 and no prosecution witness has been examined till date. She further submitted that it is also correct that the petitioner has clean antecedents and is not involved in any other case as per her instructions. 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

is 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 more than two years and in the present case charges were framed more than one year ago. No prosecution witness has been examined till date. The petitioner has clean antecedents and is not involved in any other case.

A perusal of the zimni orders which have been attached alongwith the paper-book and also produced by learned counsel for the petitioner today in the Court as Mark-X would show that for 18 times the case was adjourned by the learned trial Court for over one year and in the latter part of the orders five times bailable warrants were issued against the police officials who, according to learned counsel for the petitioner, were the part of the police party.

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 was not able to justify the same. The law with regard to repeated adjournments and its effect upon the Fundamental Rights of the accused has been so held 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”. ”

Even in a recent judgment of the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain's*** case (supra), the Apex Court dealt with this serious issue with regard to repeated adjournments and also the delay *vis-a-vis* 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 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 peculiar facts and circumstances of the present case, once no justification has come forth from the State as to what prevented the police officials to have not deposed before the Court despite the fact that for five times bailable warrants issued against both police officials who had set the criminal law into motion against the petitioner. This Court is of the view that the total custody of the petitioner which is more than two years for not fault of his would lead this Court to draw an inference that the prosecution is deliberately not deposing before the Court. The petitioner is stated to be not involved in any other case. Therefore, this Court has *prima facie* reason to believe at least at this stage and only for the purpose of considering the grant of regular bail to the petitioner and without observing anything on the merits of the case that the petitioner is not guilty of an

offence and therefore the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the present case.

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 of the present case 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 17, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No