

212

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

CRM-M-52696-2022

Date of Decision: 25.08.2023

Lakho Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Bhupinder K. Bhangu, Advocate for
Mr. Barjinder Singh, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, 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 case bearing FIR No.37 dated 25.04.2022, under Sections 22, 29, 61, 85 of the NDPS Act, 1985, registered at Police Station Cheema, District Sangrur.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 25.04.2022, which is almost 1 year and 4 months. She further submitted that the petitioner is a lady of the age of 30 years and the charges in the present case were framed by the learned trial Court on 07.10.2022 which is more than 10 months ago but till date only two prosecution witnesses have been examined. She also submitted that

even as per the prosecution story the petitioner was a pillion rider of the motorcycle which was driven by the co-accused and as per the prosecution on looking at the police party she threw away the plastic bag which was carrying 800 tablets of *Tramadol* containing 375 grams each. She further submitted that the petitioner has been falsely implicated in the present case and in fact the petitioner has clean antecedents and she is not involved in any other case.

3. Learned counsel for the petitioner further submitted that be that as it may, the learned trial Court has been constrained to issueailable warrants and non-ailable warrants for a number of times to the prosecution after the framing of the charges, but they did not care to depose before the Court and till date only two witnesses have been examined. During the course of arguments, the learned counsel for the petitioner has also supplied the photocopy of the zimni orders which were passed by the learned trial Court after the framing of the charges. While referring to the aforesaid zimni orders, she submitted that after the summoning of witnesses evenailable warrants were issued against the prosecution and thereafter, for 7 times the trial Court was constrained to issue non-ailable warrants against them.

4. Learned counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court passed in "*Satender Kumar Antil Vs. Central Bureau of Investigation and another*", 2022(10) SCC 51, "*Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*", 2023 AIR(SC) 1648, *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "*Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh*" and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "*Rabi Prakash Vs. The State of Odisha*" and

and contended that in view of the aforesaid factual position as well as the judgments passed by the Hon'ble Supreme Court, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner and particularly in view of the fact that no recovery has been effected from the present petitioner.

5. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has stated that it is correct that the petitioner has faced incarceration for more than 1 year and 4 months and the charges in the present case were framed on 07.10.2022 which is more than 10 months ago and till date only two witnesses have been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the plastic bag which was thrown by the petitioner on the ground, is 800 tablets of *Tramadol* containing 375 grams each which falls in 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.

6. I have heard the learned counsels for the parties.

7. It is a case where the petitioner is a lady of the age of 30 years and has faced incarceration for about 1 year and 4 months. As per the learned counsel for the parties, the charges were framed by the learned trial Court on 07.10.2022, which is more than 10 months ago and till date only two prosecution witnesses have been examined. A perusal of the orders passed by the learned trial Court which have been supplied by the learned counsel for the petitioner in Court today would show that as many as for 7 times, non-bailable warrants were issued against the prosecution witnesses, who are the police officials have not cared to depose before the Court.

8. During the course of arguments, this Court had raised a specific query to the learned State counsel that as to what was the justification as to why in the present case the prosecution witnesses, who are the police officials have not cared to depose before the Court despiteailable warrants and non-ailable warrants repeatedly issued against them to which he after taking instructions from the A.S.I. Badal Singh, who is present in Court today, could not offer any justification or explanation in this regard.

9. 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.”

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

11. Similarly, the Hon’ble Supreme Court in ***Dheeraj Kumar Shukla’s case (supra)*** has opined 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. Further recently, the Hon’ble Supreme Court in ***Rabi Prakash’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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. After hearing the learned counsels for the parties, this Court is of the view that considering the fact that the petitioner is a lady of the age of 30 years and she has clean antecedents and is not involved in any other case and has already faced incarceration for 1 year and 4 months and no justification has come forth as to why the learned trial Court was constrained to issue repeatedly bailable and non-bailable warrants against the prosecution witnesses, who are the police officials, the bar contained under Section 37 of the NDPS Act will not apply in the present case especially in the light of Article 21 of the Constitution of India. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

14. 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.

15. 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.

25.08.2023 (JASGURPREET SINGH PURI)
Bhumika JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No