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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-55212-2022 (O&M)  
Date of decision: 29.08.2023

SUKHCHAIN SINGH ALIAS KAKA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Chandan Singh Rana, Advocate with  
Ms. Sonia Parmar Rana, Advocate and  
Ms. Himani, Advocate  
for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

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

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.169 dated 16.05.2022, under Sections 22(c), 61, 85 of the NDPS Act and Section 29 of the NDPS Act added later on, registered at Police Station City Faridkot, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for the last about 1 year and 3 months and in the present case, there was an alleged recovery of 255.45 grams of Tramadol from the petitioner, which is slightly higher than the commercial quantity as per the NDPS Act. He further submitted that the petitioner has clean antecedents and has no criminal

background except for one FIR registered under Sections 323, 427, 451 and 34 of the IPC but there is no FIR under the NDPS Act against the petitioner and it was only because of the aforesaid pendency of the FIR that the petitioner has been falsely implicated in the present case. To substantiate his argument, learned counsel for the petitioner further submitted that the charges in the present case were framed on 15.11.2022 and almost 9 months have elapsed and till date not even a single prosecution witness has been examined. He further submitted that as per the allegations, the police party had seen the petitioner carrying a plastic bag in his right hand from where allegedly the aforesaid Tramadol was recovered and an offer was made to the petitioner, to which the petitioner had stated that he would give his consent to be searched from the ASI himself who had given him the offer. He further submitted that the entire story of the police was a concocted story and the present case has been planted upon the petitioner and that was the reason as to why the prosecution witnesses are not coming forth for deposition before the learned trial Court despite the fact that about 9 months have elapsed after the framing of the charges and not even a single witness has been examined with a result that the petitioner had to face incarceration for about 1 year and 3 months for no fault of his. He referred to the judgments of the Hon'ble Supreme Court in case of "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, Special Leave to Appeal (Criminal) No.6690 of 2022 titled as "Dheeraj Kumar Shukla versus The State of Uttar Pradesh" and Special Leave to Appeal (Criminal) No.4169 of 2023 titled as "Rabi Prakash versus The State

of Odisha” to contend that in such like situation where the accused is not at fault and the custody is perpetuated, then the effect of Section 37 of the NDPS Act is to be seen in the light of Article 21 of the Constitution of India.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has filed the custody certificate of the petitioner in Court today and the same is taken on record. As per the custody certificate filed, the petitioner is in custody for about 1 year 3 months and 11 days and there is no other case under the NDPS Act against the petitioner except for one case under Sections 323, 427, 451 and 34 of the IPC. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity although is little higher than the commercial quantity but still the bar contained under Section 37 of the NDPS Act will be applicable in the present case.

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

5. The petitioner is stated to be in custody for the last about 1 year 3 months and 11 days as per the custody certificate filed and he is not involved in any other case under the NDPS Act and the alleged recovery in the present case was little higher than the commercial quantity under the NDPS Act. The charges in the present case were framed on 15.11.2022 but as per the counsel for the parties, no prosecution witness has been examined till date. During the course of the arguments, a specific query was raised to the learned State counsel as to what was the justification as to why for a large number of times the prosecution witnesses had not come forward for deposition to which he could not offer any explanation even after obtaining instructions from the concerned Investigating Officer.

6. Hon'ble Supreme Court in Satender Kumar Antil's case (supra) has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. 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”.*

7. The Hon'ble Supreme Court in **Mohd. Muslim Hussain's case** (**supra**) has dealt with this issue with regard to delay in trial and long custody of the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.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. Recently, the Hon'ble Supreme Court in **Rabi Prakash's case** (**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 learned counsel for the parties, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner considering the fact that the total alleged recovered quantity from the petitioner was only about 5 grams more than the commercial quantity, the petitioner is not involved in any other case under the NDPS Act and particularly no justification has come forth from the learned State counsel as to why the prosecution witnesses have not been examined till date despite the fact that charges in the present case were framed on 15.11.2022. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

11. Therefore, considering the aforesaid totality and circumstances of the case, this Court deems it fit and proper to grant regular bail to the petitioner in the light of Article 21 of the Constitution of India.

12. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

29.08.2023  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

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