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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53794-2023
Date of decision: 03.11.2023

LAKHWINDER SINGH @ LUCKY

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajiv Kumar Saini, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. 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.223 dated 15.12.2021, under Sections 21-C, 25 and 29 of the NDPS Act, registered at Police Station STF, SAS Nagar, Mohali, Punjab.

2. The present is a second successive bail petition filed by the petitioner and the first bail petition was dismissed by this Court on 17.11.2022 vide Annexure P-3.

3. Learned counsel for the petitioner submitted that the petitioner is in custody from 15.12.2021, which is more than 1 year and 10 months. He further submitted that the petitioner has clean antecedents and he is not involved in any other case and the allegation against the petitioner and other co-accused was

with regard to confiscation of 306 grams of *heroin* from the car in which the petitioner and other co-accused were travelling. He further submitted that the petitioner has been falsely implicated in the present case by the police due to enmity and in order to substantiate his arguments he submitted that the charges in the present case were framed on 03.08.2022 and almost 1 year and 3 months have elapsed but not even a single prosecution witness has been examined and the reason as to why the prosecution was unable to examine the prosecution witnesses was that the petitioner has been falsely implicated in the present case at the behest of the police. He has referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]* and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. He also referred to another judgment of Hon'ble Supreme Court in *"Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR (SC) 1648*, wherein the scope of Section 37 of the NDPS Act *vis-a-vis* Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. He further referred to a judgment of Hon'ble Supreme Court in *"Dheeraj Kumar Shukla versus The State of Uttar Pradesh", 2023 SCC Online SC 918* and also another judgment of Hon'ble Supreme Court in *"Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023* to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS

Act. He also submitted that in view of the aforesaid position, the petitioner may be considered for grant of regular bail.

4. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab submitted that it is correct that the petitioner is in custody from 15.12.2021 and after the framing of the charges on 03.08.2022, not even a single prosecution witness has been examined till date. He further submitted that the petitioner has clean antecedents and he is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the confiscated quantity in the present case from the petitioner and other co-accused is 306 grams of *heroin*, which falls in the category of commercial quantity under the NDPS Act.

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

6. The present is a second successive bail petition filed by the petitioner and the earlier petition was dismissed by this Court on 17.11.2022 and by now the total custody of the petitioner comes out to be more than 1 year and 10 months and therefore, the successive bail petition is certainly maintainable. The allegation against the petitioner and other co-accused was pertaining to recovery of 306 grams of *heroin* from a car in which the petitioner and other co-accused were travelling. Since the alleged recovery falls in the category of commercial quantity under the NDPS Act, this Court would therefore consider the prayer of the petitioner in the light of Section 37 of the NDPS Act. As per the learned counsel for the parties, the charges in the present case were framed on 03.08.2022, which is almost 1 year and 3 months ago but not even a single prosecution witness has been examined. During the course of

arguments, learned State counsel was asked as to what was the justification with regard to the same, to which he could not offer any justification.

7. 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 No.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”.

8. 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.

9. 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.”

10. The Hon'ble Supreme Court again in **Rabi Prakash's case** (**supra**) 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.”

11. In view of the aforesaid facts and circumstances, this Court is of the view that considering the fact that the petitioner is having clean antecedents, has faced incarceration for more than 1 year and 10 months and almost 1 year and 3 months have elapsed after the framing of the charges but not even a single prosecution witness has been examined till date, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

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.

(JASGURPREET SINGH PURI)
JUDGE

03.11.2023

Chetan Thakur

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