

220-A

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

CRM-M-58258-2022

Date of Decision: 28.08.2023

Gurjit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gaurav Datta, 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.74 dated 11.03.2022, under Sections 15, 18, 20, 20-C, 25 & 29 of the NDPS Act, 1985, registered at Police Station Sahnewal, District Police Commissionerate Ludhiana.

2. It has been submitted by learned counsel for the petitioner that it is a case where as per the allegation the police had secret information with regard to the fact that two trucks were coming and there is a possibility that they are carrying some intoxicant substance. The first truck i.e. PB23M5617 in which allegedly the petitioner was sitting on the conductor seat and he was the owner of the truck and the same was driven by the Kuldeep Singh @

Keepa and there was another truck i.e. PB10CW6731 which was driven and owned by other co-accused, namely, Avninder Singh @ Maninder Singh and Pushpinder Singh @ Bittu, respectively. He further submitted that the police had apprehended both the trucks and so far as the present truck is concerned in which the petitioner was sitting on the conductor seat, there was no recovery at all made from the truck whereas the other truck which was stated to be following the present truck from where there had been an alleged recovery of 2 quintals of *Ganja*, 3 kgs. of *Poppy Husk* and 500 grams of *Opium*. He submitted that so far as the present petitioner is concerned, he has clean antecedents and he is not involved in any other case and he is the person of the age of 60 years having multiple ailments and has also undergone bypass surgery and has been falsely implicated in the present case. He also submitted that the information received by the police was totally false information and no recovery has been effected from the petitioner and still he has faced incarceration for 1 year, 5 months and 17 days and by now only one prosecution witness has been examined. He further submitted that even otherwise also the prosecution witnesses, who are the police officials have not cared to depose before the Court and for two times bailable warrants have been issued against the prosecution witnesses and for one time even non-bailable warrants have been issued against them but only one witness has been examined and that too partly. He further submitted that after the examination-in-chief, one of the prosecution witnesses did not care to subject himself to cross-examination and therefore, non-bailable warrants have been issued against him.

3. 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 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 truck in which the petitioner was sitting on the conductor seat.

4. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that no recovery has been effected from the truck in which the petitioner was sitting on the conductor seat. However, he submitted that there was a secret information pertaining to two trucks and the petitioner has been named in the FIR and there was a huge recovery from the other truck and in fact the truck in which the petitioner was sitting, was escorting the other truck and therefore, the petitioner does not deserve the concession of regular bail.

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

6. It is a case where some of the facts are not disputed. The custody of the petitioner which is 1 year, 5 months and 17 days is not disputed. It is also not disputed that there was no recovery effected from the truck in which the petitioner was sitting on the conductor seat and despite

charges being framed on 19.09.2022, only one witness has been examined and that too partly and after the examination-in-chief of one of the witnesses, who did not appear for cross-examination. It is also not in dispute that the petitioner has clean antecedents and he is not involved in any other case. Therefore, this Court will consider the bail petition of the petitioner in the light of Section 37 of the NDPS Act. The petitioner although named in the FIR but the allegations were that there were four persons and two trucks were coming but admittedly no recovery was effected from the truck in which the petitioner was sitting on the conductor seat.

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 and after getting examination-in-chief why the material prosecution witness was not subjecting himself to cross-examine and the Court was constrained to issue non-bailable warrants against him, to which he after taking instructions from the concerned police official, 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)*** has 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 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."

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 aforesaid facts and circumstances and particularly in view of the fact that the petitioner is a heart patient and has undergone bypass surgery earlier and has clean antecedents and no recovery effected from the truck in which he was sitting on the conductor seat, this Court deems it fit and proper to grant regular bail to the petitioner especially

in the light of Article 21 of the Constitution of India since the bar contained under Section 37 of the NDPS Act will not apply in the present case.

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.

28.08.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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