

CRM-M-57499-2022

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57499-2022
Date of Decision: 13.07.2023

Balbir Singh @ Bira

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Suresh Kumar Arya, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, 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 grant of regular bail to the petitioner in case bearing FIR No.70 dated 17.06.2021, under Sections 22/25/29 of the NDPS Act, 1985, registered at Police Station Barnala, District Barnala.
2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 2 years and 14 days as of today. He further submitted that it is a case where the petitioner was falsely implicated in the present case on the basis of the disclosure statement made by the other co-accused, namely, Amritpal Singh and Hemant Pal. He also submitted that as per the prosecution, aforesaid two co-accused were caught on the spot and from whom there was a recovery of 50,000 tablets of *Tramadol Hydrochloride*. Thereafter, on the disclosure statement of the aforesaid co-accused, namely, Amritpal Singh, there was further recovery from him to the

extent of 50,000 tablets of *Tramadol Hydrochloride* and some cash of Rs.1 lac was also recovered from him. It was thereafter from the disclosure statement of the aforesaid co-accused, namely, Amritpal Singh that the name of the petitioner was nominated and from him there was an alleged recovery of 22,000 tablets of *Tramadol Hydrochloride*. He further submitted that in fact the petitioner has been falsely nominated only because of the reason that he was earlier involved in one case under the NDPS Act and two cases under the Excise Act. He also submitted that so far as the case under the NDPS Act is concerned, he is already acquitted in the aforesaid case and the police does not have any sufficient material available to connect the petitioner with the present offence except for the disclosure statement of the co-accused, which is not admissible in evidence. He further submitted that although the recovery is admissible under Section 27 of the Evidence Act but considering the long custody of the petitioner, he may be considered for the grant of regular bail.

3. Learned counsel for the petitioner further submitted that charges in the present case were framed on 29.03.2022 and thereafter, the prosecution witnesses, who are the police officials, were summoned by the learned trial Court. Thereafter, the learned trial Court was constrained to issue bailable warrants at least for four times against the police officials, who are the prosecution witnesses, for deposing before the Court but they did not care to depose and rather 10 of the witnesses have been given up at the time of the trial. As of date, only one witness has been examined completely and two witnesses have been examined partially. During the course of arguments, the learned counsel supplied a photocopy of the zimni

orders which were passed by the learned trial Court after the framing of the charges on 29.03.2022. The aforesaid zimni orders as supplied by the learned counsel for the petitioner are taken on record and marked as 'X'.

4. Learned counsel for the petitioner has also brought to the notice of this Court that two more co-accused, namely Banti Kaur @ Ghoga and Robin @ Ritik Gupta were also nominated on the basis of the statement made by the aforesaid co-accused, namely, Amritpal Singh and from Banti Kaur @ Ghoga, allegedly, there was a recovery of 1830 loose intoxicant tablets and from Robin @ Ritik Gupta, there was a recovery of 1500 tablets of *Tramadol Hydrochloride* and both the co-accused have been extended the benefit of regular bail by this Court in CRM-M-42793-2021 and CRM-M-47950-2022, on 17.05.2022 and 11.01.2023, respectively, on the ground that both the co-accused have been nominated on the basis of the disclosure statement of the co-accused, namely, Amritpal Singh and also on the ground that there was no other material available with the police to connect both the aforesaid co-accused with the present offence. So far as the present petitioner is concerned, he is also at parity with the aforesaid co-accused, namely, Banti Kaur @ Ghoga and Robin @ Ritik Gupta, even if, the total quantity as allegedly recovered from the petitioner was of 22,000 tablets of *Tramadol Hydrochloride*. He further submitted that in fact the alleged recovery was planted upon the petitioner because of the reason that earlier he was involved in one case under the NDPS Act and in that case, he has already been acquitted.

5. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central

Bureau of Investigation and another”, 2022(10) SCC 51, to contend that the Hon’ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the right to life under Article 21 of the Constitution of India. He also referred to a latest judgment of the Hon’ble Supreme Court passed in **“Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)”**, 2023 AIR(SC) 1648,” to contend that in the given facts and circumstances of the case, wherein delay in trial due to the fault of the prosecution and not because of the accused then the rigor of Section 37 of the NDPS Act may not apply and therefore, in the present case, considering the facts and circumstances of the present case, the rigor of Section 37 of the NDPS Act does not apply to the petitioner.

6. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has stated that so far as the custody of the petitioner is concerned, it is correct that he is in custody from last 2 years and 14 days. He further submitted that although the charges were framed on 29.03.2022, which is almost 1 year and 4 months ago but one witness has been examined completely and two witnesses have been examined partially and since there was a recovery of 22,000 tablets of *Tramadol Hydrochloride* from the petitioner in pursuance of the disclosure statement made by the co-accused, the prayer of the petitioner is, therefore, hit by the bar contained under Section 37 of the NDPS Act.

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

8. The present is a case where the petitioner has faced incarceration for 2 years and 14 days as of date and as per the learned counsel for the parties and zimni orders passed by the trial Court after the

framing of the charges, would show that the learned trial Court for number of times and at least four times issuedailable warrants against prosecution witnesses, who are the police officials, who had set the criminal law into motion and even at the initial stages, those witnesses were rather bound down by the orders passed by the learned trial Court.

9. During the course of arguments, this Court 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 did not care to depose despite being bound down andailable warrants issued against them, to which he could not offer any explanation but has submitted that now one witnesses has been examined completely and two have been examined partially and the reason for deferring the cross-examination was that the counsel for the accused and the present petitioner were not ready for cross-examination.

10. The other two accused, namely, Banti Kaur @ Ghoga and Robin @ Ritik Gupta have been extended the benefit of regular bail by this Court in the aforesaid cases as stated above. Although there is a difference in the quantity but the other parameters qua the present petitioner and the other co-accused remains the same.

11. 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.”

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

13. Therefore, considering the aforesaid totality of circumstances of the present case and especially in view of the total custody of the petitioner and that the name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused, this Court, therefore, deems it fit and

proper to grant regular bail to the petitioner, especially in the light of Article 21 of the Constitution of India.

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.

13.07.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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