

106+206

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.29824 of 2023 in/ and
CRM-M No.57826 of 2022 (O&M)
Date of Decision: 21.07.2023

Sikander Singh @ Kandi

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rishu Mahajan, Advocate
for the applicant-petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

CRM No.29824 of 2023

1. This is an application filed under Section 482 Cr.P.C. seeking permission for placing on record the zimni orders as at Annexure P-5.
2. For the reasons stated in the application, the same is allowed and the said Annexure is taken on record.
3. The application stands allowed.

Main Case

4. The present is the second petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.247 dated 16.11.2020, under Section 22(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Mehatpur, District Jalandhar Rural.

5. It has been so submitted by learned counsel for the petitioner that he has been in custody for 02 years and 08 months and the allegation(s) against the petitioner are that from his hand a bag was recovered which contained 7000 tablets of Tramadol. Learned counsel for the petitioner submitted that it is a case where the petitioner has been falsely implicated by a police party and the petitioner is not having any criminal background and he is not involved in any other case. He has submitted that even the provision of Section 50 of the NDPS has not been complied with. Although it is the case of the prosecution that the petitioner has given his consent but he had infact not given any kind of consent and if at all, it was a false statement on the part of the prosecution. He has further submitted that the safeguard which is provided under Section 50 of the NDPS Act was not followed.

6. He has further submitted that it is a case where the learned trial Court has framed charges on 09.02.2021 and now more than 02 years and 05 months have elapsed that afterailable warrants and nonailable warrants issued to the prosecution witnesses that they have examined 04 prosecution witnesses including the Investigating Officer. Learned counsel has referred to Annexure P3 and Annexure P-4 annexed with CRM-29824 of 2023 wherein most of the zimni orders passed by trial Court after framing of the charges have been attached. While referring to the aforesaid orders he has submitted that the Prosecution Witnesses were served at initial stages and thereafter the trial Court had to issueailable warrants against the 04 police officers/ officials who were the Prosecution Witnesses and who have set the criminal law into motion and in an alternate to that, it was also directed for five times that half of the salary of the Prosecution Witnesses be stopped in order to secure their presence and submitted that the trial

Court had to take coercive steps to secure the presence of both the witnesses who have falsely implicated the petitioner in the present case. He has further submitted that apart from the aforesaidailable warrants atleast twice even non-ailable warrants were issued against both prosecution witnesses to whom earlierailable warrants were issued but they did not come present despite issuance ofailable warrants against them. Learned counsel has submitted that the PWs are the police officers/ officials and once the Court summoned them then even otherwise also, it is a part of a disciplined force that they are bound to depose before the Court and the fact that trial Court had to use coercive methods repeatedly for nine times by issuing theailable warrants, issuance of nonailable warrants and for attachment of salary would substantiate his argument that he has been falsely implicated in the present case especially considering the fact that the petitioner is having no criminal background and is not involved in any other case and also accompanied by the fact that the petitioner did not give any consent for the search by the Police Officers who were apprehending the petitioner and there was a non compliance of Section 50 of the NDPS Act. In support of this, he referred to the judgment of Hon'ble Supreme Court in ***"Satender Kumar Antil Vs. Central Bureau of Investigation", (2021) 10 SCC 773*** with regard to repeated adjournments in the light of Article 21 of the Constitution of India. He has also referred to the judgment of Hon'ble Supreme Court in ***"Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)" [2023 AIR (SC) 1648]*** wherein the Apex Court has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. Learned counsel for the petitioner has further referred to the latest judgment of Hon'ble Supreme Court in ***"Rabi Prakash Vs. State of Odisha"*** Special Leave to

Appeal (Crl.) No(s).4169 of 2023, with regard to the issue of prolonged incarceration.

7. On the other hand, learned State counsel has stated that so far as the custody of the petitioner is concerned it is correct that the petitioner is in custody for about 02 years and 08 months and it is also not disputed that the petitioner is not having any criminal background and is not involved in any other case. He however, has submitted that the delay of trial had occurred because another co-accused was not apprehended earlier and therefore, supplementary challan under Section 173 of the Cr.P.C. was presented and due to this reason, the trial was delayed and apart from the above, supplementary list of witnesses was also filed before the trial Court. He has also submitted that since there was a recovery of 7000 tablets of Tramadol from the petitioner, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

8. I have heard learned counsel for the parties.

9. It is a case where the petitioner had faced incarceration of about 02 years and 08 months. The petitioner is stated to be not involved in any other case and is having clean antecedents. The charges in the present case were framed on 09.02.2021 which is almost 02 years 05 months. As per learned counsel for the parties, only 04 witnesses have been examined. A perusal of the zimni orders attached with CRM-29824-2023 would show that atleast for nine times bailable warrants were issued against the Prosecution Witnesses and despite being served they did not appear and therefore, twice non bailable warrants were issued and for five times as an alternative, half salary of the police officers/ officials was stopped.

10. The Hon'ble Supreme Court in ***"Satender Kumar Antil Vs. Central Bureau of Investigation"***, (2021) 10 SCC 773 had considered the issue with

regard to repeated adjournments in the light of 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”.

11. Recently, the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [2023 AIR (SC) 1648]** wherein the Apex Court has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.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.

12. Further recently, the Hon'ble Supreme Court in "**Rabi Prakash Vs. State of Odisha**" Special Leave to Appeal (Crl.) No(s).4169 of 2023 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. In view of the aforesaid totality of facts and circumstances, especially in view of the facts that the bar contained under Section 37 of the NDPS Act will not apply to the present petition and in the light of Article 21 of the Constitution of India, this Court deems it fit and proper to grant regular bail to the petitioner.

14. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned 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 meant for the purpose of deciding the present petition only.

16. Since the main petition has been allowed, all the pending application(s) also stand(s) disposed of.

21st July, 2023

Sonia Puri

(JASGUPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No