

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

CRM-M-58821-2022 (O&M)

Date of Decision: 21.04.2023

Sunil

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Gahlawat, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

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 FIR No. 403 dated 09.10.2020, under Sections 20, 25, 61 of NDPS Act, registered at Police Station Sadar Rohtak, District Rohtak.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 09.10.2020 which is almost 2 ½ years. He submitted that the petitioner is not involved in any other case under the NDPS Act. However, the petitioner is involved in some cases under the Excise Act and it was only because of that reason, he has been falsely implicated in the present case. He submitted that since the petitioner was falsely implicated in the present case, he had rather filed an application before the learned trial Court seeking preservation and supply of CDR details of the mobile tower location since the petitioner was not even present at the time which is shown to be the place,

he has been arrested and he was falsely implicated by the police officials. He submitted however that application was opposed by the prosecution before the learned trial Court on the ground that the same cannot be supplied at this stage because that can be supplied only at an appropriate stage of defence and the call details have been preserved. He further submitted that apart from the above, the plea of the petitioner that he has been falsely implicated is also fortified from the fact that the charges in the present case were framed on 21.02.2022 which is almost 1 year and 2 months but no prosecution witness has been examined. He referred to the zimni orders which were passed by the learned trial Court after the framing of the charges which have been attached alongwith the present petition as Annexure P-10 (Colly). He submitted that after the framing of the charges when the matter came up for hearing on 19.05.2022, then three witnesses were present but they could not be examined since the Court time was over but they were bound down for the next date i.e. 26.09.2022 and on that one prosecution witness was present but he could not be examined as Court time was over and he was again bound down and even bailable warrants were issued against them. He submitted that after the framing of the charges when the matter came up for hearing on 19.05.2022, learned trial Court due to the paucity of time, adjourned the case for 4 months and thereafter when the matter was fixed for 26.09.2022, the learned trial Court had adjourned the case for 5 months and posted it for 15.02.2023. He submitted that when the matter was taken up on 15.02.2023 now the learned trial Court had adjourned the case for another 5 months i.e. for 11.07.2023. He submitted that the net result of the same was that no prosecution witness has been examined and the petitioner had to face incarceration for 2 ½ years for no fault of the petitioner. He submitted that although on the aforesaid date i.e. on

15.02.2023 it was on the request of the petitioner, but the date fixed by the learned trial Court was 5 months. He submitted that in view of the aforesaid factual position and the long custody of the petitioner and the fact that no prosecution witness has been examined till date after the framing of charges for more than 1 year, he may be considered for the grant of regular bail. He 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]*** to contend that such kind of delayed adjournments have adverse effect upon the Fundamental Rights of an accused under Article 21 of the Constitution of India. He further referred to a latest judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [Criminal Appeal No.943 of 2023]*** to contend that in certain circumstances where delay has been caused in a trial, then even the stringent provision of Section 37 of the NDPS Act gets diluted and a prayer for bail can be considered on the ground of long custody in a given facts and circumstances of any case.

3. On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that the petitioner is in custody for 2 ½ years and the charges were framed on 21.02.2022 but no prosecution witness has been examined till date. She has opposed the grant of regular bail to the petitioner on the ground that the recovery from the petitioner was 4 kg. and 514 grams of Charas which falls in the category of commercial quantity and therefore the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. She submitted that although it is correct that the petitioner is not involved in any other case under the NDPS Act but he is involved in five more cases under the Excise Act.

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

5. The petitioner has already faced incarceration for 2 ½ years. The charges were framed on 21.02.2022 which is more than 1 year and 4 months but no prosecution witness has been examined till date. The learned trial Court had adjourned the case for 4/5 months. The prosecution witnesses were even bound down but were not examined and even on 26.09.2022, bailable warrants have been issued against the prosecution witnesses. The petitioner is stated to be not involved in any other case under the NDPS Act. Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)* has discussed this issue of repeated adjournments and the scope 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”.

6. Recently also the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** 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 produced 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.

7. In the present facts and circumstances more than one year has elapsed after the framing of the charges but no witness has been examined. The petitioner is not at fault for the delay of the trial. The net result of the same was that the petitioner had to face incarceration for 2 ½ years and still the trial of the case may take long time and he is not involved in any other case under the NDPS Act and therefore this Court is of the view that rigor of Section 37 of the NDPS Act will not apply to the petitioner in view of the peculiar facts and circumstances of the present case.

8. In view of the above and considering the long custody of the petitioner which is 2 ½ years 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.

9. 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.

10. 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.

21.04.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking

: Yes/No

Whether reportable

: Yes/No