

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-60561-2022 (O&M)  
Date of Decision: 13.09.2023

AMARJIT KAUR @ DANI

....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Randhir Singh Thind, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 214 dated 22.12.2020, under Section 22 (C) of the NDPS Act, 1985, registered at Police Station Passiana, District Patiala.

2. Learned counsel for the petitioner has submitted that the petitioner is a lady of the age of 43 years and is in custody from 10.10.2022 which is about 11 months 5 days. He submitted that it is a case where the petitioner has been falsely implicated in the present case and as per the allegations one ASI Chaman Lal sent ruqa for registration of the FIR against the present petitioner by stating that the aforesaid ASI has received a secret information that the petitioner had hidden some narcotic tablets in a polythene bag under the mound of sand in a room which is constructed in her house which can be recovered. He further submitted that a perusal of the aforesaid FIR itself shows that the same was only a concocted story to

implicate the present petitioner. He submitted that in the present case the provisions of Section 42 of the NDPS Act are not complied with which were required to be complied with mandatorily in view of the judgment of Hon'ble Supreme Court in *Karnal Singh Versus State of Haryana, 2009(5) RCR (Crl.) 515 and Darshan Singh Versus State of Haryana, 2016(1) RCR (Crl.) 333*. He submitted that no such information was received from any person and it was the police officers themselves who on their own got the FIR registered while sitting in the police station and without any ruqa or information etc and therefore, there was a violation of Section 42 of the NDPS Act. He further submitted that the reason as to why the petitioner has been implicated in the present case is that she was earlier involved in some cases out of which one pertains to NDPS Act and due to the aforesaid cases in which the petitioner was involved, she has been falsely implicated to justify the recovery of some tablets. He further submitted that this Court had directed the State to file an affidavit pertaining to the fact as to whether there was a violation of Section 42 of the NDPS Act or not to which an affidavit has been filed by the State in which nothing substantial has come forward to show as to how Section 42 of the NDPS Act has been complied with despite the fact that FIR was registered based upon secret information.

3. Learned counsel further submitted that the aforesaid fact that the petitioner has been falsely implicated gets substantiated from the fact that the charges in the present case were framed on 08.12.2022 and more than 9 months have elapsed but till date not even a single witness has been examined. During the course of arguments, learned counsel for the petitioner also supplied a photostat copy of the interlocutory orders passed by the learned trial Court which are taken on record as Mark-X. While referring to

the same, he submitted that a perusal of the same would show that for number of times the matter has been adjourned and the prosecution witnesses, who were the police officials, who had set the criminal law into motion were served and about three times bailable warrants were issued against the I.O ASI Baljeet Singh and he was also bound down for a number of times and even after issuance of bailable warrants for a number of times, he did not choose to step into the witness box despite the fact that the charges were framed on 08.12.2022 nobody has been examined till date and the trial has been delayed for no fault of the petitioner who is a lady of the age of 43 years.

4. Learned counsel further 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 the 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 referred to another judgment of Supreme Court in *Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* and also a recent judgment of Supreme Court in *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) 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.

5. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has filed reply by way of affidavit of DSP, Sub-Division Samana, District Patiala and has submitted that it is correct that the petitioner is in custody from 10.10.2022 and till date no prosecution witness has been examined. He has however opposed the grant of bail to the petitioner on the ground that there has been a recovery of 2400 tablets of Tramadol from the house of the petitioner and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act and apart from the same, the petitioner was earlier also involved in 4 more cases out of which one pertains to NDPS Act in which the petitioner was convicted.

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

7. It is a case where the petitioner is a lady of the age of 43 years and she is in custody from 10.10.2022. As per the zimni orders as supplied by the learned counsel for the petitioner during the course of the arguments, the charges were framed on 08.12.2022 and thereafter, for a number of dates the prosecution witnesses were bound down for appearing especially the Investigating Officer ASI Baljeet Singh and not only this, even for three times bailable warrants have been issued against him but he did not choose to appear before the learned trial Court for deposing. During the course of arguments a specific query was raised to the learned State counsel as to what is the justification that why the police officials especially the Investigating Officer who set the criminal law into motion have not cared to depose before the Court to which he could not offer any justification.

8. Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)* has discussed this serious issue.

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”.*

9. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. 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.*

10. 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.”*

11. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (Supra)*** has also 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.*

12. Apart from the above even to the query raised with regard to compliance of Section 42 of the NDPS Act is concerned, the learned State counsel also while referring to the affidavit by the State submitted that no such ruqa or secret information which is so stated in the FIR is not appended with the affidavit.

13. Therefore, considering the aforesaid totality and circumstances of the present case especially considering the fact that the petitioner is lady of the age of 43 years and after framing the charges on 08.12.2022 not even a single witness has been examined despite issuance of repeated bailable warrants by the learned trial Court against the prosecution witnesses who are the police officials who set the criminal law into motion, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially in the light of Article 21 of the Constitution of India since the delay in the trial has not occurred on account of the fault of the petitioner. Apart from the above, the recovery is not effected from the person of the petitioner and it is stated to be effected from house to which

during the course of arguments learned counsel for the petitioner denied that she was living in the same house. In view of the facts and circumstances of the present case and the mere fact that the petitioner was earlier involved in other cases cannot become a ground for denial of bail to the petitioner. Therefore, considering the totality and circumstances of the present case, 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.

13.09.2023

rakesh

Whether speaking  
Whether reportable

(JASGURPREET SINGH PURI)  
JUDGE

: Yes/No  
: Yes/No