

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-320-2024 (O&M)
Date of Decision: 23.04.2024

(I)

Danish Manzoor

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-18383-2024 (O&M)

(II)

Manjit Singh @ Lada

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner in CRM-M-320-2024.

Mr. Deepak K. Bartia, Advocate,
for the petitioner in CRM-M-18383-2024.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of regular bail.
2. Both the petitions have been filed under Section 439 of the

Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 12 dated 31.01.2021, under Sections 15, 61 and 85 of NDPS Act, registered at Police Station Division No.7, Jalandhar, District Jalandhar.

3. Mr. Ruhani Chadha, learned counsel appearing on behalf of the petitioner Danish Manzoor in CRM-M-320-2024 submitted that he is in custody from 31.01.2021 which is almost 3 years and 3 months and charges in the present case were framed on 08.10.2021 which is almost 2½ years ago and till date only 10 prosecution witnesses have been examined. He submitted that petitioner is not involved in any other case and has got clean antecedents and the allegations in the FIR were that as per police information there was likelihood of contraband being carried in a truck and on information it was found that the petitioner was the driver of the truck and the other co-accused were shifting some bags of poppy husk from the truck to the car and allegedly the total poppy husk in the present case involved is 450 kgs. He submitted that in fact the petitioner has been falsely implicated in the present case and even otherwise also, when he earlier filed a bail petition before this Court, the same was dismissed by a Co-ordinate Bench of this Court on 28.04.2023 which is almost 1 year ago and at that point of time 10 prosecution witnesses stood examined and the same is the position till date and in this way for about last 1 year the trial has not progressed. He submitted that considering his total custody of 3 years and 3 months, he may be considered for grant of regular bail. He also referred to the judgments of Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51], *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648],

Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022) and Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023 in this regard.

4. Mr. Deepak K. Bartia, learned counsel appearing on behalf of the petitioner namely, Manjit Singh @ Lada in CRM-M-18383-2024 submitted that he is also in custody for 3 years and 3 months and he is also having clean antecedents and as per the allegations, he was found shifting bags of poppy husk from the truck to the car. He submitted that he has been falsely implicated in the present case at the instance of the police and otherwise also, he is also entitled for the grant of bail in view of his long custody, the stage of trial and also in view of the aforesaid judgments of the Hon'ble Supreme Court as cited by the learned counsel for the petitioner Danish Manzoor.

5. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that both the petitioners are having clean antecedents and they are not involved in any other case. He submitted that the charges in the present case were framed 2½ years ago i.e. on 08.10.2021 and only 10 witnesses have been examined till date. He has however opposed the grant of regular bail to both the petitioners on the ground that the quantity confiscated was large quantity i.e. 450 kgs of poppy husk which falls in the category of commercial quantity and therefore, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act.

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

7. It is a case where both the petitioners have already faced incarceration for 3 years and 3 months. Both the petitioners are stated to be having clean antecedents and are not involved in any other case. The charges in the present case were framed about 2½ years ago i.e. on 08.10.2021 and only 10 prosecution witnesses have been examined. A perusal of the earlier order passed by a Co-ordinate Bench of this Court while declining the bail to the petitioner Danish Manzoor on 28.04.2023, it is apparent that on that date as well, only 10 prosecution witnesses stood examined and now about 1 year has elapsed, then again as per the learned counsel for the parties 10 witnesses have been examined which would mean that there had been no progress in the trial for last 1 year.

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

Para 49 of the aforesaid judgment is reproduced as under:-

“49. 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. 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. 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. After hearing the learned counsel for the parties, this Court is of

the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the large custody of the petitioners, clean antecedents of the petitioners and the stage of the trial, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the light of Article 21 of the Constitution of India.

13. Therefore, considering the totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to both the petitioners.

14. In view of the above, both the petitions are allowed. Both the petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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 petitions only.

23.04.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No