

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CRM-M-5848-2024(O&M)
Date of Decision:03.04.2024

Gurjit Singh @ Gobinda

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ritesh Pandey, Advocate for
Mr. A.S. Barnala, Advocate for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a fourth petition filed under Section 439 read with Section 482 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.35 dated 28.05.2021, under Sections 21, 22 and 25 of the NDPS Act, registered at Police Station Thulliwal, District Barnala, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 2 years and 09 months and the charges were framed on 05.10.2021 which is almost two and half years ago. He further submitted that till today out of 16 prosecution witnesses only 06 prosecution witnesses have been examined and 04 prosecution witnesses have been given up by the prosecution itself. Learned counsel for the petitioner further submitted that there has been a delay in the trial on the part of the prosecution because prosecution witnesses had not been deposing before the Court for long time and the net result of the same is

that the petitioner had to face incarceration for about 02 years and 09 months.

3. Learned counsel for the petitioner further submitted that it is a case where the petitioner has been falsely implicated because of the reason that earlier he was convicted for a period of three months in one other case under the NDPS Act and there were four more cases pending under the IPC against the petitioner and he has earned acquittal in some of them. He further submitted that because of the aforesaid reason by terming the petitioner to be a habitual offender, he has been falsely implicated by the police and a false recovery of 2000 tablets of *tramadol* was made upon the petitioner which falls under the commercial quantity. He further submitted that in order to substantiate his argument, he referred to FIR itself and submitted that when the FIR was registered on the basis of the information, it has been so stated in the FIR that the petitioner is a habitual offender and the provision of Section 22 of the NDPS Act is applicable to him and thereafter the process started and the petitioner was arrested falsely (although in the translated version of the FIR it has been so stated as under Section 21 of the NDPS Act and in the vernacular it has been stated as under Section 22 of NDPS Act). He further submitted that at the time when the information was received by the police and even according to the prosecution there was no possibility for the police to have known which provision of law would be applicable and what could be the quantity which could have been recovered and with all anticipation, the same has been done and this goes into show that the petitioner was falsely implicated by way of a premeditated mind and in a pre-planned manner by the police.

4. He further submitted that be that as it may even otherwise also the petitioner has faced incarceration for about 2 years and 09 months which is a long custody. He has 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 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 further referred to a judgment of Hon'ble Supreme Court in ***“Dheeraj Kumar Shukla versus The State of Uttar Pradesh”, 2023 SCC Online SC 918*** and also a judgment of Hon'ble Supreme Court in ***“Rabi Prakash versus The State of Odisha”, Special Leave to Appeal (Criminal) 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. Adeshwar Singh Pannu, AAG, Punjab, on instructions of ASI Manjeet Singh, submitted that it is correct that the petitioner is in custody for about 2 years and 09 months and it is also not disputed that out of total 16 prosecution witnesses only 06 prosecution witnesses have been examined till date and the charges in the present case were framed on 05.10.2021 i.e. about two and half years ago. He has however opposed the grant of regular bail to the petitioner since the

quantity involved in the present case falls under category of commercial quantity.

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

7. It is a case where the petitioner is in custody from about 2 years and 09 months. Undoubtedly, the total recovery from the petitioner is stated to be about 2000 intoxicant tablets. The petitioner is although stated to be involved in one another case under the NDPS Act wherein he was convicted for a period of three months and four more cases under the IPC are pending against him and in some of the cases he has earned acquittal. The charges in the present case were framed by the learned trial Court on 05.10.2021 and more than 02 years and 06 months have elapsed only six prosecution witnesses have been examined. For the purpose of considering the bar of Section 37 of the NDPS Act, two aspects are to be seen. Firstly, the long custody of the petitioner. The Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)*** has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. 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 fkk or 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”.

8. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (*supra*) has dealt with the issue regarding delay in trial and long custody of the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.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.

9. 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.”

10. The Hon'ble Supreme Court in ***Rabi Prakash's case (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.”

11. Secondly the argument raised by learned counsel for the petitioner that even before any alleged recovery was made how could the police have known that provision of Section 22 of the NDPS Act would be applicable and particular kind of contraband could be recovered from the petitioner and it is a case of false implication that cannot be ignored. Although this Court does not wish to go into the merits of the aforesaid false implication but only for the purpose of considering the prayer of the petitioner for making a departure from Section 37 of the NDPS Act the aforesaid factor is a relevant one.

12. Therefore, this Court is of the view that considering the aforesaid totality and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

13. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

03.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No