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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7449-2024(O&M)

Date of Decision: 05.03.2024

Mohinder Singh @ Jhanda @ Mahinder Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S Sekhon, Advocate, for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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.147 dated 09.09.2022, under Sections 22-B and 27 of NDPS Act, registered at Police Station Sardulgarh, District Mansa.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for about 2 ½ years and charges in the present case were framed on 06.01.2023 and more than 1 year and 1 month have elapsed but till date only 2 out of 12 cited witnesses have been examined. He submitted that the aforesaid two witnesses namely, Senior Constable Harminder Singh and ASI Swaran Singh who have been examined till date are only formal witnesses and not even associated with the recovery and they were not part of the police party and those officers who were the material witnesses and had arrested the petitioner have not appeared to

depose before the learned trial Court. He submitted that the alleged recovery from the petitioner was 85 grams of alprazolam and 258.4 grams of Tramadol which collectively falls in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the fact that the trial has been delayed at the hands of the prosecution and not because of the fault of the petitioner.

3. Learned counsel further referred to a judgment of 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 affected. 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.

4. On the other hand, Mr. Rohit Ahuja, learned DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and only two witnesses have been examined as stated above and charges were framed on 06.01.2023. He has however opposed the grant of

bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act and since the recovery falls in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

6. It is a case where the petitioner has already faced incarceration for about 2 ½ years and the charges in the present case were framed on 06.01.2023 and more than 1 and 1 month have elapsed after the framing of the charges but only two prosecution witnesses have been examined as per learned counsel for the parties and that too are only the formal witnesses. It is the case of the learned counsel for the petitioner that the prosecution witnesses who are the part of the police party or recovery witnesses have not been examined despite the fact that more than 1 year and 1 month have elapsed after the framing of the charges. The mere pendency of another FIR against the petitioner pertaining to NDPS Act cannot become a ground for denial of bail to the petitioner considering the fact that the petitioner has already faced incarceration for about 2½ years.

7. 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”.

8. 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.

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. 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.

11. Therefore, considering the aforesaid totality and circumstances of the present case and considering the fact that the petitioner is in custody for about 2 ½ years and no material witness has been examined till date despite the fact that the charges were framed more than 1 year and 1 month ago, this Court is of the view that the bar contained Section 37 of the NDPS Act 1985 will not apply to the petitioner in the light of Article 21 of the Constitution of India.

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

13. 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.

14. 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.

05.03.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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