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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8628-2024
Date of decision: 21.03.2024

SUKHJINDER SINGH ALIAS GAGAN BHALWAN

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. H. S. Oberoi, Advocate
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fifth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.49 dated 15.03.2021, under Sections 22, 29, 61, 85 of the NDPS Act and Sections 473, 489 of the IPC, registered at Police Station Sadar Patiala, District Patiala, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 3 years and only 7 prosecution witnesses have been examined out of total cited 17 prosecution witnesses. He further submitted that it is a case where the trial is not progressing and the allegations against the petitioner were with regard to the alleged recovery of 24 bottles of *codeine phosphate*, of which the total weight comes out to be 2.40 kgs. He further submitted that the petitioner has been falsely implicated in the present case because earlier in point

of time he was convicted in one case under the NDPS Act and his sentence was suspended by this Court and it was only because of this reason that he has been falsely implicated in the present case. He also submitted that the total custody of the petitioner comes out to be about 3 years and the father of the petitioner is a third stage cancer patient and there is nobody to look after him and even otherwise also, the petitioner himself is suffering from hepatitis and he is getting treatment from the jail but his medical condition has not improved. He further submitted that be that as it may, considering the total custody of the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner and therefore, he may be considered for the grant of regular bail. He 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 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.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that so far as the custody of the petitioner is concerned, the same is about 3 years and the petitioner was earlier convicted under the NDPS Act, although his sentence was suspended by this Court but the petitioner being a habitual offender does not deserve the concession of regular bail. He further submitted that only 7 prosecution witnesses have been examined out of total

cited 17 prosecution witnesses and since the confiscated quantity falls in the category of commercial quantity because the confiscated quantity was 2.40 kgs. of *codeine phosphate*, the petitioner does not deserve the concession of regular bail.

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

5. The custody of the petitioner comes out to be around 3 years as per the learned counsel for the parties. 7 prosecution witnesses have been examined out of total cited 17 prosecution witnesses. The petitioner is stated to be a previous convict under the NDPS Act. The recovered quantity of 2.40 kgs. of *codeine phosphate* falls in the category of commercial quantity. However, learned counsel for the petitioner laid emphasis on the fact that his father is a third stage cancer patient and there is nobody to look after him and the petitioner himself is also a patient of hepatitis. He also stated that since the petitioner has already faced custody for about 3 years and the trial is not progressing because only 7 prosecution witnesses have been examined, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

6. 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 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”.

7. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (**supra**) has dealt with this 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.

8. After hearing learned counsel for the parties, this Court is of the considered view that irrespective of the fact that the recovery from the petitioner falls in the category of commercial quantity as it was 2.40 kgs. of *codeine phosphate*, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner considering the health condition of the father of the petitioner and of the petitioner himself and the long custody of about 3 years

and 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.

9. 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.

10. 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.

21.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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