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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9345-2024(O&M)
Date of Decision: 05.04.2024

Mangal Singh @ Mangli

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Riffi Birla, Advocate, for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.293 dated 07.12.2019, under Sections 21/61/85 of NDPS Act (Sections 18/23/29 of NDPS Act added later on), registered at Police Station Sadar Fazilka, District Fazilka.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 4 years and 3 months and charges in the present case were framed on 10.03.2022 which is more than 2 years ago and till date only one prosecution witness has been examined. She submitted that it is a case where the petitioner has been falsely implicated and as per the allegations, the petitioner was allegedly going on a bullock cart which was checked by the BSF personnel and thereafter, there was alleged recovery of 2 kgs. and 156 grams of heroin, besides 45 grams of opium. She submitted

that the petitioner is not involved in any other case and has got clean antecedents and has been falsely implicated at the instance of the police. She further submitted that be that as it may, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in view of the long custody of the petitioner which comes out to be 4 years and 3 months and more than 2 years have elapsed after the framing of the charges but only one prosecution witness has been examined. She 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* to contend that in the facts and circumstances of the present case and considering the custody of the petitioner, he may be considered for the grant of regular bail.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted on instructions from ASI Raj Singh who is present in the Court that so far as the custody of the petitioner is concerned, the same is correct and the petitioner is having clean antecedents and he is not involved in any other case. He has however opposed the grant of bail to the petitioner on the ground that 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. He also submitted on specific instructions that after the framing of the charges on 10.03.2022 which is more than 2 years ago only one prosecution witness has been examined.

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

6. It is a case where the petitioner has already faced incarceration for more than 4 years and 3 months and the charges in the present case were framed on 10.03.2022 and more than 2 years have elapsed after the framing of the charges but only one prosecution witness has been examined as per learned counsel for the parties. The petitioner is stated to be not involved in any other case and is having clean antecedents. Since the alleged recovery from the petitioner falls in the category of commercial quantity, it will be necessary to consider the effect of Section 37 of the NDPS Act in the present case.

7. On a query being raised to the learned State counsel as to what was the justification as to why only one prosecution witness has been examined even after more than two years have elapsed after the framing of the charges to which after receiving instructions from the concerned officer who is present in the Court, he could not give 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 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 fact that the petitioner is in custody for more than 4 years and 3 months and the stage of the trial whereby more than 2 years have elapsed after the framing of the charges but only one prosecution witness has been examined, 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.

13. 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.

05.04.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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