



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-M-10198-2024(O&M)
Date of Decision:16.07.2024

Sukhwinder Singh @ Kaka

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.Hitesh Chopra, 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 case bearing FIR No.98 dated 20.08.2020 under Section 21/29/61and 85 of NDPS Act, registered at Police Station Special Task Force District Mohali.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 21.08.2020 which is more than 3 years and 10 months. He further submitted that the charges in the present case have been framed on 14.03.2022 and only three prosecution witnesses have been fully examined and one prosecution witness has been partially examined. He further submitted that the allegations in the present case were that on the basis of the secret information, the police recovered 4 kgs and 290 grams of heroin from the fields of the petitioner and the fields of the petitioner are situated at Indo-Pak border and are enclosed by fences. He further submitted that petitioner is having clean antecedents and he is not involved in any other criminal case.



He further submitted that the mere fact that if assumingly some contraband was found in the fields of the petitioner that would not automatically raise any presumption and would not mean that he is involved in the present case considering the fact that he is not a habitual offender. He further submitted that although there is a lot of cross border smuggling of heroin etc. going on but there is one other co-accused in the present case and as per the prosecution itself it was on his demand that the aforesaid contraband was kept in the cemented pipe near the field of the petitioner. Learned counsel for the petitioner further asserted that rather the petitioner and such like persons who are the owners of land at the Indo-Pak border are rather victims because if any contraband is found in their fields then the police raises a presumption that they have been indulged in smuggling. Learned counsel for the petitioner further submitted that be that as it may even otherwise also the petitioner has already faced incarceration for more than 3 years and 10 months and he is having clean antecedents and is not involved in any other criminal case and till date only three prosecution witnesses have been examined and one prosecution witness has been partially examined and as such he may be considered for grant of regular bail.

3. Learned counsel for the petitioner has referred to a judgment in this regard of Hon'ble Supreme Court in ***Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]*** and contended that it has been settled that right to speedy trial is Right to Life guaranteed under Article 21 of the Constitution of India and considering the aforesaid total period of incarceration of the petitioner, he is entitled for grant of regular bail.



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.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab on instructions from ASI Ajay Kumar, submitted that so far as the custody of the petitioners as so stated by learned counsel for the petitioner is concerned, the same is correct. It is also correct that charges were framed on 14.03.2022. He further submitted that it is also not disputed that the petitioner has no criminal background. He further submitted that since recovery of contraband from the fields of the petitioner was 4 kgs and 290 grams and the same was also effected in the presence of a gazetted officer and therefore the petitioner is involved in the present offence. He further submitted that although the custody of the petitioner is long but considering the fact that the aforesaid recovered quantity falls under the category of commercial quantity and the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act and as such the petitioner is not entitled for grant of regular bail.

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

6. The total custody of the petitioner has come out to be more than 03 years and 10 months. The charges in the present case were framed on 14.03.2022 but only three prosecution witnesses have been fully examined and one prosecution witness has been partially examined. It is an admitted position that the petitioner has clean antecedents and is not involved in any other criminal case. The alleged recovery from the petitioner was 04 kgs and



quantity. Therefore, this Court would consider the prayer of the petitioner in the light of Section 37 of NDPS Act

7. 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 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. The Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain***

(Supra) has also dealt with the issue pertaining to delay in the trial vis-a-vis bar



contained under Section 37 of the NDPS Act. 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 facts of the present case suggest that the petitioner who is having clean antecedents and recovery of aforesaid contraband was made from his field which is situated at Indo-Pak border. There is no justification coming forth as to why there has been a delay in the trial. Therefore considering the aforesaid long custody of the petitioner and his clean antecedents, this Court is of the considered view that the bar contained

under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of aforesaid judgments of Hon'ble Supreme Court in *Satender Kumar Antil (supra)* and *Mohd.Muslim (supra)*.

10. 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.

11. 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

16.07.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No