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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13113-2024(O&M)

Date of Decision: 08.07.2024

Sonu Singh @ Jaswinder 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. Adeshwar Singh Pannu, AAG, 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.14 dated 19.01.2023, under Sections 21, 22 and 29 of NDPS Act, registered at Police Station Dharamkot, District Moga.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody for 1 year and 5 months and the allegations against the petitioner were that the petitioner was carrying a polythene bag in his right hand and on seeing the police party, he threw away the said polythene bag on the ground and a recovery of 20 grams of heroin and 200 loose tablets was made from the aforesaid bag. He submitted that as per the FSL report, out of the aforesaid 200 loose tablets, 170 tablets were having the salt of Alprazolam which does not fall in the category of commercial quantity. The aforesaid quantity of heroin also does not fall in



the category of commercial quantity. However, 30 tablets were having the salt of Etizolam as per the FSL report which constitutes 6 grams and therefore does fall in the category of commercial quantity. He submitted that it is a case where a stereotype FIR has been lodged that when the police party saw the petitioner, he was coming from the opposite direction and he threw away the polythene bag on the ground which he was carrying on seeing the police party and such kind of FIRs are numerous in the State of Punjab. He submitted that although in the present case, the petitioner has been falsely implicated in view of the fact that earlier he was involved in three more cases under the NDPS Act.

3. Learned counsel further submitted that even otherwise also, the custody of the petitioner is 1 year and 5 months and the charges in the present case were framed by the learned trial Court on 31.08.2023 which is almost 10 months ago but till date no prosecution witness has been examined. During the course of arguments, learned counsel for the petitioner has also supplied photocopies of the zimni orders which are hereby taken on record as Mark-X. While referring to the aforesaid zimni orders, he submitted that after the framing of the charges for two times bailable warrants and two times non-bailable warrants were issued against the prosecution witnesses and even on one date, one prosecution witness was present but he did not get himself examined due to his own reasons and in this way about 10 months have elapsed after the framing of the charges but no prosecution witness has been examined. He referred to 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, 2023 SCC Online SC 918 and Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023 and contended that considering the aforesaid facts and circumstances and the aforesaid judgments, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted on instructions from ASI Sukhwinder Singh that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the charges in the present case were framed on 31.08.2023 but till date no prosecution witness has been examined. He has however opposed the grant of bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in six more cases out of which three pertain to the NDPS Act. He also submitted that although the quantity of heroin and Alprazolam salt does not fall in the category of commercial quantity but so far as the salt of Etizolam is concerned, there were 30 tablets which constitute about 6 grams as per the FSL report which falls in the category of commercial quantity because as per the NDPS Act, the commercial quantity is 2.5 grams. He submitted that therefore the bar contained under Section 37 of the NDPS Act will apply to the present petitioner and he is not entitled for the grant of regular bail.

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

6. It is a case where the petitioner has already faced incarceration for 1 year and 5 months and out of the total quantity recovered as per the prosecution itself, 20 grams of heroin does not fall in the category of



commercial quantity. 170 tablets of the Alprazolam salt as per the Forensic Science Laboratory report does not fall in the category of commercial quantity, whereas that of 30 tablets of Etizolam does fall in the category of commercial quantity. The petitioner is stated to be involved in three more cases under the NDPS Act.

7. However, this Court would consider the argument raised by the learned counsel for the petitioner that about 10 months have elapsed after the framing of the charges but no prosecution witness has been examined till date. A perusal of the zimni orders which have been supplied by the learned counsel for the petitioner during the course of arguments would show that two times bailable warrants were issued and two times even non-bailable warrants were issued but the prosecution witnesses have not cared to depose before the learned trial Court for the reasons best known to them and even on one date one prosecution witness had appeared but he was not examined.

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 custody of the petitioner and the stage of the trial whereby about 10 months have elapsed after the framing of the charges but no 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 of facts 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.

08.07.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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