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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13984-2024(O&M)
Date of Decision: 15.05.2024

Dinesh Kumar Suman

....Petitioner

Versus

Union of India

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ravinder Malik (Ravi), Advocate, for the petitioner.

Mr. Sourabh Goel, Senior Panel Counsel,
for the respondent-UOI.

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 case bearing Crime No.24 dated 14.05.2019, under Sections 8, 18, 29 & 60 of NDPS Act, registered at Police Station Narcotics Control Bureau, CZU, Chandigarh.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 5 years and charges in the present case were framed on 30.03.2020 which is more than 4 years and there are total 27 prosecution witnesses and even 13 witnesses are yet to be examined. He submitted that when earlier the petitioner had filed a bail petition before this Court, the same was dismissed by this Court vide Annexure P-5 on 06.07.2023 wherein rather considering the incarceration of the petitioner, a direction was issued to the learned trial Court to expedite the trial only considering the long custody of the petitioner.



3. Learned counsel further submitted that the allegation in the present case was pertaining to recovery of 20 kgs. of *Opium* from two accused including the petitioner. He further submitted that in fact the petitioner has been falsely implicated in the present case because of the reason that earlier he was involved in one more case in which he stands convicted and because of the aforesaid reason, the aforesaid quantity was planted upon the petitioner. He submitted that be that as it may, the petitioner has already faced incarceration for 5 years and 13 witnesses are yet to be examined and therefore, the petitioner may be considered for grant of regular bail. He submitted that the bar of Section 37 of the NDPS Act will not apply to the petitioner in view of the long incarceration of 5 years and also in view of the fact that in the month of July, 2023, a direction was issued to the learned trial Court to expedite the trial but still the same has not been concluded and even report was called by this Court from the trial Court in the present case. He also 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* in this regard.

4. On the other hand, Mr. Sourabh Goel, learned Senior Panel Counsel for the respondent-UOI has submitted that so far as the custody of the petitioner is concerned, the same is correct. He submitted that there was a recovery of 20 kgs. of *Opium* which falls in the category of commercial quantity under the NDPS Act from two accused including the petitioner and therefore, the prayer of the petitioner is hit by the bar contained under Section



37 of the NDPS Act. He further submitted that the petitioner was earlier convicted in one case under the NDPS Act and sentenced for a period of 10 years and while his sentence was suspended, the present offence was committed and therefore, he does not deserve the concession 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 5 years. When the earlier bail petition was filed by the petitioner, a direction was issued to the learned trial Court to expedite the trial because of the long custody of the petitioner. However, the trial was not concluded and therefore, the present bail petition has been filed in which this Court had directed the learned trial Court to submit a report with regard to the status of the case and it has been so reported by the learned trial Court that 27 witnesses mentioned in the list of witnesses and three more witnesses have been summoned after the application under Section 311 Cr.P.C filed by the learned Special Public Prosecutor which was allowed on 23.04.2024. Out of the aforesaid witnesses, the deposition of 13 witnesses has been completed and 4 witnesses have been given up by the prosecution and in this way, 13 witnesses including the witnesses summoned under Section 311 Cr.P.C are yet to be examined and an endeavour will be made to conclude the trial as soon as possible. Although now as per report of the learned trial Court, the trial will be concluded as soon as possible but the fact remains that 13 more witnesses are yet to be examined. The petitioner has already faced incarceration for 5 years. The argument raised by the learned State counsel that when the petitioner was earlier convicted under the NDPS Act and sentenced for a period of 10 years and while his sentence was suspended, the present offence was committed and therefore, the petitioner should be denied



bail cannot be sustained in view of the fact that the petitioner is still an undertrial in the present case and allegations are yet to be proved during trial.

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. 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. After hearing the learned counsels for the parties, this Court is of the view that considering the judgments of Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner which is for 5 years and the stage of the trial, 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.

12. 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.

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.

15.05.2024
rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking : Yes/No

Whether reportable : Yes/No