

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-15636-2023 (O&M)
Date of Decision:05.03.2024

Sahil Kanda

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr.Sunil Chandha, Sr. Advocate with
Mr. Arjun Veer Sharma, Advocate for the petitioner.

Mr. Mohit Ahuja, DAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

CRM-35986-2023

Present application has been filed for placing on record certain documents.

Application is allowed as prayed for subject to all just exceptions.

The accompanying documents are taken on record as Annexures P-5 and P-6.

Main case

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 FIR No.145 dated 25.08.2021 under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Special Task Force, District STF Wing, Mohali.

2. Learned Senior counsel for the petitioner submitted that the petitioner is in custody since 25.08.2021, which is more than 02 years and 06 months. He further submitted that the trial of the case is not progressing

because till now only 05 witnesses have been examined and 03 have been given up. He further submitted that on 28.08.2023 this Court directed to learned State Counsel to file an affidavit as to whether the provisions of Section 42 of NDPS Act have been complied with or not in the present case to which the State-respondent has filed an affidavit which is already on record. While referring to the aforesaid affidavit which has been filed by learned State counsel in which it has been so stated that the secret information was received by one Munish Riat and he informed the same to one Makhan Lal, who in turn reduced the information into writing and thereafter the report was sent to the concerned DSP. He further submitted that the procedure adopted by the police was not in accordance with Section 42 of the NDPS Act because the person who had received the information was required to have reduced the same in the form of writing. In this regard learned Senior counsel for the petitioner has referred to a judgement of Hon'ble Supreme Court in ***Directorate of Revenue & anr. vs. Mohammed Nisar Holia 2008 (2) SCC 370*** to contend that the person who had received the information was bound to reduce the same in writing. Learned counsel for the petitioner also 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 also a latest judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]*** and contended that it is a clear cut case where there is a deprivation of Right to Life guaranteed under Article 21 of the Constitution of India.

3. Learned Senior counsel also submitted that even otherwise also

the report was not placed upon the judicial file and he referred to the cross examination of Makhan Lal in which he so deposed that no such receiving note or receiving receipt of report under Section 42 NDPS Act is on the judicial file. He has submitted that even otherwise also the alleged recovery from the petitioner was of 512 grams of heroin which falls under the commercial quantity but considering the long custody of petitioner which is more than 02 years and 06 months, the petitioner may be considered for the grant of regular bail.

4. On the other hand, learned State counsel has stated that it is correct that the petitioner is in custody from 25.08.2021, which is more than 02 years and 06 months. It is also not disputed by learned State counsel that till date only 05 prosecution witnesses have been examined and 03 prosecution witnesses have been given up. He further submitted that as per the custody certificate, the petitioner is involved in three more criminal cases and out of the aforesaid three cases, he has since been acquitted in one case and the second case pertains to Prison Act and in third case the petitioner is on bail. He further submitted that since recovery from the petitioner was 512 grams of heroin, the same falls in the category of the commercial quantity and as such opposed the grant of regular bail to the petitioner on the ground that bar under Section 37 of the NDPS Act will apply in the present case.

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

6. The total custody of the petitioner as per the custody certificate has come out to be more than 02 years and 06 months. The alleged recovery from the petitioner was 512 grams of heroin which undoubtedly

falls in the category of commercial quantity under the NDPS Act. Therefore, this Court would consider the prayer of the petitioner in the light of Section 37 of NDPS Act. As per the learned counsel for the parties, 05 prosecution witnesses till date have been examined and 03 prosecution witnesses have been given up. The charges in the present case were framed on 04.04.2022 which is almost about 02 years ago.

7. A perusal of the affidavit which has been filed by the police would show that information was received by the aforesaid Munish Riat and he instead of reducing the same in the form of writing, sent the information to another person namely Baljinder Singh and thereafter in turn the aforesaid Makhan Lal has reduced the same in the form of writing. During the course of arguments, learned Senior counsel has referred to a judgment of Hon'ble Supreme Court in ***Directorate of Revenue (supra)*** to contend that the person who received the information ought to have reduced the same in the form of writing and in case the same is not done then it is in violation of Section 42 of the NDPS Act. This Court, at this stage, would not make any observation with regard to the aforesaid as to whether there was a violation of Section 42 of the NDPS Act or not but the same can always be a relevant factor for considering the prayer of the petitioner for the grant of the regular bail. The custody of the petitioner which is stated to be more than 02 years and 06 months is long custody and only 05 prosecution witnesses have been examined and 03 have been given up till date, despite the fact that about 02 years have elapsed, after framing the charges. During the course of arguments, learned Senior counsel for the petitioner also referred a judgment of Hon'ble Supreme Court in

Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51] and also a latest judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]* to contend that when there is long trial and the same is not progressing in a fast pace, then the right to speedy trial is affected and therefore the Fundamental Rights under Article 21 of the Constitution of India are affected.

8. This Court is of the view that considering the aforesaid judgments as also considering the custody of the present petitioner and the fact that about 02 years have been elapsed after framing the charges and only 05 prosecution witnesses have been examined, this Court is of the view that the bar of Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

10. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

05.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No