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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-16070-2024  
Date of decision: 08.04.2024

ONKAR SINGH @ RAJU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Arnav Sood, Advocate  
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.241 dated 05.11.2021, under Section 22-61-85 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Division 8, District Police Commissionerate, Jalandhar, Punjab.
2. Learned counsel for the petitioner submitted that the present is a second successive bail petition filed by the petitioner for grant of regular bail and earlier petition was dismissed on merits on 18.07.2023 vide Annexure P-5. He further submitted that it is a case where now the total custody of the petitioner is more than 2 years and 5 months since he was arrested on 05.11.2021 and thereafter, the learned trial Court has framed charges on 23.05.2022, which is more than 1 year and 10 months ago and the trial of the

case is not progressing and till date only 2 prosecution witnesses have been examined and that too the non-material witnesses. He further submitted that the 2 witnesses who were examined are one Munshi, who had deposited the samples and one police official, who had authored the FIR but none of recovery witnesses or that of the police party has been examined for the best reasons known to the prosecution. He further referred to the zimni orders which have been passed by the learned trial Court on various occasions vide Annexure P-3 from where it is clear that repeatedlyailable and non-ailable warrants have been issued to the prosecution witnesses but they have not cared to depose before the learned trial Court. He also submitted that although the petitioner is involved in one more case under the NDPS Act but this is a case where the petitioner was falsely implicated and allegedly there was a recovery of 3000 tablets of *tramadol* from him and thereafter, on his disclosure, three more co-accused were nominated. He further submitted that considering the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially in view of the judgments of the 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 versus The State of Uttar Pradesh*, 2023 SCC Online SC 918 and *Rabi Prakash versus The State of Odisha*, *Special Leave to Appeal (Criminal) No.4169 of 2023*.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab, on instructions from ASI Gurdeep Singh, submitted that so far as the custody of the petitioner is concerned, the same is correct and charges in the present case were

framed by the learned trial Court on 23.05.2022, which is more than 1 year and 10 months ago but the material witnesses have not been examined till date and only two witnesses have been examined i.e. one Munshi, who had deposited the samples and one police official, who was the author of the FIR. He further submitted that the petitioner is not entitled for grant of regular bail in view of the bar contained under Section 37 of the NDPS Act because qua the petitioner, there was a recovery of 3000 tablets of *tramadol*, which falls in the category of commercial quantity and thereafter, on his disclosure statement, the other co-accused were nominated from whom there was again a huge recovery of about 93000 tablets of *tramadol* and considering the aforesaid facts and circumstances, the petitioner is not entitled for the grant of regular bail.

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

5. The petitioner is in custody for more than 2 years and 5 months. The charges were framed by the learned trial Court on 23.05.2022, which is more than 1 year and 10 months ago. As per the learned counsel for the parties, only 2 prosecution witnesses have been examined and that too non-material witnesses. None of the prosecution witnesses who were a part of the police party or the police witnesses or other material witnesses have been examined till date. A perusal of the zimni orders passed by the learned trial Court vide Annexure P-3 would show that repeatedly the learned trial Court was constrained to issue bailable and non-bailable warrants to the prosecution witnesses but they have not been appearing. During the course of arguments, this Court had put a specific query to the learned State counsel as to what was the reason as to why the trial got delayed because of the non-presence of the prosecution witnesses despite repeated bailable and non-bailable warrants being

issued to which he could not give any justification even after taking instructions from the concerned police official, who is present in the Court.

6. 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”.*

7. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (**supra**) has dealt with this issue with regard to delay in trial and long custody of the accused person *vis-a-vis* the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.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.*

8. The 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.”*

9. The Hon'ble Supreme Court in **Rabi Prakash's case** (**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.”*

10. In view of the aforesaid totality and circumstances of the present case and considering the custody of the petitioner and the fact that the trial of the case is not progressing in a proper manner, this Court is of the view that 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 and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

11. 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.

12. 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.

08.04.2024  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

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