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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17636-2023
Date of decision: 06.09.2024

SUKHJINDER SINGH

...Petitioner

VERSUS

UNION OF INDIA

...Respondent

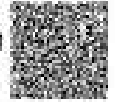
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D. S. Virk, Advocate for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel for the respondent-UOI.

JASGURPREET SINGH PURI, J. (Oral)

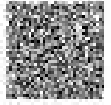
1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in NCB Crime No.08 dated 04.02.2021, under Sections 8, 18, 27-A, 28, 29, 30 and 60 of the NDPS Act, registered at Police Station Narcotics Control Bureau, Chandigarh Zonal Unit, Chandigarh.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for 2 years and 9 months and in fact on the basis of the long custody when the trial was not progressing, he was granted the benefit of interim bail by this Court vide order dated 14.11.2023. He further submitted that the petitioner, namely, Sukhjinder Singh is present in the Court today and he identifies him. He further submitted that after the grant of interim bail to the petitioner, he has not jumped the interim bail and has also not violated any of the conditions of



interim bail and since he is present in the Court today and the prayer is for grant of regular bail, he may be considered to be in the deemed custody of this Court so as to consider the prayer of the petitioner for grant of regular bail.

3. Learned counsel for the petitioner submitted that after excluding the period of interim bail, the total custody of the petitioner comes out to be 2 years and 9 months and only 7 prosecution witnesses have been examined till date. He further submitted that the allegations in the present case were with regard to recovery of 2.78 kgs. of *opium* from the vehicle in which the petitioner and another co-accused were travelling and therefore, allegedly the recovery of the aforesaid *opium* was from two persons even as per the prosecution. He further submitted that the commercial quantity of *opium* under the NDPS Act is 2.5 kgs. and the alleged recovery in the present case was marginally higher than the aforesaid commercial quantity as defined under the NDPS Act. He further submitted that considering the long custody of the petitioner and also the 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 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*, he may be considered for the grant of regular bail.

4. Learned counsel for the petitioner also submitted that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view of the fact that the aforesaid alleged recovery of *opium* was from the



vehicle and not from the person of the petitioner. He further submitted that even otherwise also the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the long custody of the petitioner i.e. 2 years and 9 months and in light of the aforesaid judgments passed by Hon'ble Supreme Court because the petitioner would be entitled for the grant of regular bail in light of Article 21 of the Constitution of India.

5. On the other hand, Ms. Puneeta Sethi, Senior Panel Counsel for the respondent-UOI submitted that it is correct that the petitioner is in custody for 2 years and 9 months after excluding the period of interim bail granted to him. She further submitted that after the grant of interim bail to the petitioner, he has not violated any of the conditions of interim bail. She has however opposed the grant of regular bail to the petitioner on the ground that the aforesaid recovery of *opium*, although marginally higher, falls in the category of commercial quantity under the NDPS Act and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. She referred to the judgment passed by Hon'ble Supreme Court in **State by the Inspector of Police versus B. Ramu, Criminal Appeal No(s).000801 of 2024 (Arising out of SLP (Criminal) No(s). 8137 of 2022)** in this regard. She also submitted that the petitioner is involved in one more case under the NDPS Act, in which there was a recovery of 8 kgs. of *poppy husk* from him.

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

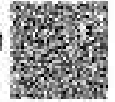
7. The total custody of the petitioner has come out to be 2 years and 9 months after excluding the period of interim bail granted to him. The mere fact that the petitioner is involved in one more case under the NDPS Act as



aforesaid involving recovery of 8 kgs. of *poppy husk* from him, which is not even a commercial quantity would not become a ground for not considering the regular bail petition of the petitioner. Learned counsel for the petitioner stated that the petitioner who was granted interim bail by this Court on 14.11.2023 because of non-progress of the trial, is present in the Court today and the learned counsel for the petitioner has identified the petitioner. Therefore, the petitioner is considered to be in the deemed custody of this Court.

8. The petitioner was granted interim bail by this Court on 14.11.2023 because of non-progress of the trial and in light of the aforesaid judgments of Hon'ble Supreme Court. As per both the learned counsel for the parties, the petitioner has neither jumped the interim bail nor has he violated any of the conditions of interim bail. The alleged recovery of 2.78 kgs. of *opium* was made from the vehicle and not from the person of the petitioner and the another co-accused. As per the NDPS Act, the commercial quantity as defined under the NDPS Act is 2.5 kgs. of *opium* and therefore, even as per the prosecution, the recovery is marginally higher than the commercial quantity.

9. Learned Senior Panel Counsel for the respondent-UOI has referred to judgment passed by Hon'ble Supreme Court in **B. Ramu's case (supra)** to contend that when the quantity is high, then the Courts should be slow in considering the grant of regular bail. The aforesaid judgment would be distinguishable on facts in view of the fact that in the aforesaid judgment the matter was pertaining to recovery of very huge quantity of *ganja* i.e. 232.5 kgs., which is so stated in para No.3 of the aforesaid judgment. However, in the present case, the aforesaid alleged recovery from the vehicle in which the



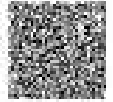
petitioner and another co-accused were travelling was marginally higher than the commercial quantity and therefore, the aforesaid judgment in **B. Ramu's case (supra)** would be distinguishable on facts.

10. 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”.

11. 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



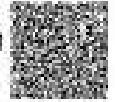
the accused person *vis-a-vis* the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.19 and 20 are reproduced as under:-

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.

12. 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

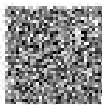


quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions 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.”

13. 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.”

14. After hearing learned counsel for the parties and considering the aforesaid facts and circumstances of the present case, this Court is of the view that considering the long custody of the petitioner i.e. 2 years and 9 months and the fact that only 7 prosecution witnesses have been examined till date and the alleged recovery of *opium* is marginally higher than the commercial quantity as defined under the NDPS Act and that too from the vehicle in which the petitioner and another co-accused were travelling, the bar contained under



Section 37 of the NDPS Act will not apply to the petitioner in light of Article 21 of the Constitution of India and also in light of aforesaid judgments of Hon’ble Supreme Court.

15. Consequently, the present petition is allowed. The interim bail granted by this Court on 14.11.2023 is made absolute. The petitioner shall remain on same bails/surety bonds.

16. 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.

06.09.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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