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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17169-2024
Date of decision: 19.07.2024

RAJENDER SINGH

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

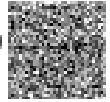
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (Oral)

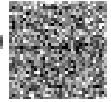
1. The present is a seventh petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.106 dated 15.04.2020, under Sections 22-C and 29 of the NDPS Act, registered at Police Station Civil Lines Kaithal, District Kaithal, Haryana.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 15.04.2020, which is more than 4 years and 3 months. He further submitted that the allegations against the petitioner were that when the police party saw a motorcycle, which was being driven by the petitioner then on seeing the police party, he took a u-turn and thereafter, he was caught and from the petrol tank of the said motorcycle, one packet was found from where there was a recovery of 12000 tablets of *Alprazolam* 0.5 mg. He further submitted



that in fact the petitioner has been falsely implicated in the present case because he was earlier involved in two more cases under the NDPS Act, out of which in one case he has already been acquitted.

3. Learned counsel for the petitioner also submitted that the present is a seventh successive bail petition filed by the petitioner and rather earlier for four times he was granted interim bail and after completion of the interim bail, he had surrendered well in time and did not jump the bail and also not violated any of the conditions of interim bail. Regarding progress of the trial, he submitted that it is a case where only 9 prosecution witnesses have been examined out of total cited 22 prosecution witnesses and charges in the present case were framed by the learned trial Court on 22.02.2021, which is almost 3 years and 5 months. He further pointed out that when earlier the petitioner filed bail petitions before this Court then rather this Court in CRM-M-46280-2022 and CRM-M-31614-2023 had twice directed the learned trial Court to expedite the trial considering the custody of the petitioner at that point of time but still the trial has not progressed and only 9 prosecution witnesses have been examined.

4. Learned counsel for the petitioner further submitted that the delay in the trial has occasioned because of the fault of the prosecution and not because of the petitioner and considering the custody of the petitioner, he may be considered for grant of regular bail. He has referred to 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

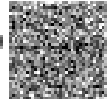


versus The State of Uttar Pradesh”, 2023 SCC Online SC 918 and “Rabi Prakash versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023 and submitted that the right of speedy trial has been jeopardized in the present case and even if the alleged confiscated quantity recovered from the petitioner as aforesaid falls in the category of commercial quantity, 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.

5. On the other hand, Mr. Gaurav Jindal, Addl. A.G., Haryana submitted that it is correct that the petitioner is in custody for more than 4 years and 3 months and charges in the present case were framed by the learned trial Court on 22.02.2021 and till date only 9 prosecution witnesses have been examined out of total cited 22 prosecution witnesses. He further submitted that the petitioner is a habitual offender and is involved in two more cases under the NDPS Act, out of which in one case he has been acquitted. He has however opposed the grant of regular bail to the petitioner on the ground that the recovery from the petitioner was of 12000 tablets of *Alprazolam* 0.5 mg., which is not only a commercial quantity but is also a huge quantity and because of this reason as well, the petitioner does not deserve the concession of regular bail being hit by the bar contained under Section 37 of the NDPS Act.

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

7. The petitioner is in custody for more than 4 years and 3 months. He is stated to be involved in two more cases under the NDPS Act, out of which he has been acquitted in one case. Charges in the present case were framed by the learned trial Court on 22.02.2021, which is almost 3 years and 5 months ago but

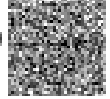


as per the learned counsel for the parties, only 9 prosecution witnesses have been examined out of total cited 22 prosecution witnesses. The present is a seventh successive bail petition filed by the petitioner. In the earlier two bail petitions bearing CRM-M-46280-2022 and CRM-M-31614-2023, this Court had rather directed the learned trial Court to expedite the trial but as per the learned counsel for the parties, trial has not progressed in a proper manner. In this way, the petitioner has faced incarceration for more than 4 years and 3 months as aforesaid.

8. The objection raised by the learned State counsel pertaining to the application of Section 37 of the NDPS Act is required to be considered keeping in view the aforesaid alleged quantity recovered from the petitioner.

9. 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:-

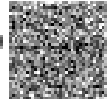
“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses 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”.

10. 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

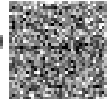


in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

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.

11. 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

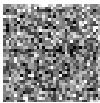


this stage, more so when the trial is yet to commence though the charges have been framed.”

12. 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.”

13. The facts and circumstances of the present case suggest that the trial has not progressed in a proper manner despite order passed by this Court twice to the learned trial Court for expediting the trial. In this way, the total custody of the petitioner has come out to be more than 4 years and 3 months. Therefore, considering the aforesaid facts and circumstances of the present case, this Court is of the considered view that 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 the aforesaid judgments of Hon’ble Supreme Court.

14. 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.

15. 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.

19.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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