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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of Decision: 16.12.2024

Sandeep Kumar alias Laddi

.....Petitioner

Versus

Union of India and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. V.B. Godara, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate,
for respondent No.1.

Mr. Gaurav Jindal, Addl. AG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a 2nd petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.135 dated 05.08.2021, under Sections 21/29/31-A of the NDPS Act, 1985, registered at Police Station Jhansa, District Kurukshetra.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 3 years 4 months and 8 days and it is a case where the charges were framed on 29.08.2022, which is more than 2 years and 3 months ago and till date only 3 out of 21 total cited prosecution witnesses have been examined. He further submitted that as per the allegations, police received an information on the basis of which a complaint lodged against three persons, namely, Tej Partap Singh @ Tabu, Sandeep Kumar @ Laddi



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(Petitioner) and Shankar Singh Sisodia. Thereafter, the matter was transferred to the Narcotics Control Bureau, Chandigarh for further investigation on 15.12.2021. As per the police, when some of the police officials in a Government vehicle were on patrolling duty for crime detection, then a secret informer met them and supplied an information that the co-accused, namely, Tej Partap Singh @ Tabu, who was earlier also indulged in business of selling *Heroin/smack* and is a habitual offender, is coming from Village Salpani Kalan for selling the *Heroin/smack* and thereafter, the aforesaid co-accused, namely, Tej Partap Singh @ Tabu was apprehended and from whom there was a recovery of 285 grams of *Heroin* along with the weight of polythene bag. Thereafter, on the basis of disclosure statement of the aforesaid co-accused, search of his house was conducted wherein there had been a recovery of currency note amounting to Rs.8,45,000/-. Thereafter, on the disclosure statement of the aforesaid co-accused, another recovery of 525 grams of *Heroin* was made from a room of his house.

3. Learned counsel for the petitioner further submitted that so far as the present petitioner is concerned, he was not named in the FIR and it was during the investigation, on the basis of disclosure statement of the aforesaid co-accused, namely, Tej Partap Singh @ Tabu, who was apprehended by the police, the name of the petitioner was nominated in the present FIR. He also submitted that there was no recovery from the petitioner in the present case and he has been falsely implicated in the present case because of the reason that earlier he was involved in 5 more cases pertaining to the NDPS Act, out of which, he has already been acquitted in 4 cases and in one case he has been convicted and sentenced to undergo 10 years of imprisonment but his sentence has already been suspended in that case.



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4. Learned counsel for the petitioner also submitted that although the present petition is a second successive bail petition filed by the petitioner but the earlier bail petition of the petitioner was dismissed on merit on 25.09.2023 and now more than 1 year and 2 months have elapsed and the trial of the case is not progressing and till date only 3 out of 21 total cited prosecution witnesses have been examined despite the fact that the charges were framed on 29.08.2022 which is more than 2 years and 3 months ago. He submitted that considering the long incarceration of the petitioner i.e. 3 years 4 months and 8 days and the stage of the trial, he may be considered for grant of regular bail.

5. Learned counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court passed in "**Satender Kumar Antil Vs. Central Bureau of Investigation and another**", 2022(10) SCC 51, to contend that in view of the aforesaid factual position as well as the aforesaid judgment passed by Hon'ble Supreme Court when there is a long delay in the trial especially when the delay is not due to the fault of the accused in such situations, the petitioner is entitled for grant of regular bail in the light of Article 21 of the Constitution of India.

6. On the other hand, Mr. Rajiv Sharma, learned counsel appearing on behalf of the respondent No.1-NCB submitted that so far as the custody of the petitioner is concerned, it is correct that he has faced incarceration for 3 years 4 months and 8 days. He further submitted that the name of the petitioner was nominated on the basis of disclosure statement of the co-accused, namely, Tej Partap Singh @ Tabu and so far as the present petitioner is concerned, no recovery was effected from him. He however has opposed the grant of regular bail to the petitioner on the ground that the petitioner along



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with the aforesaid co-accused, namely, Tej Partap Singh @ Tabu and Shankar Singh Sisodia formed a gang for the purpose of smuggling the narcotics and considering the seriousness of the offence, the petitioner is not entitled for grant of regular bail.

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

8. It is a case where the petitioner has faced incarceration for 3 years 4 months and 8 days and the present is a second successive bail petition filed by the petitioner and the earlier petition was dismissed on merits on 25.09.2023 which is more than 1 year and 2 months ago and as per the learned counsel for the parties, till date only 3 out of 21 total cited prosecution witnesses have been examined despite the fact that the charges in the present case were framed on 29.08.2022, which is more than 2 years and 3 months ago. The submission made by the learned counsel for the petitioner for grant of regular bail to the petitioner is based upon his long incarceration. As per the learned counsels for the parties, so far as the antecedents of the petitioner is concerned, he is involved in 5 more cases under the NDPS Act, out of which, he has already been acquitted in 4 cases and in one case he stands convicted and sentenced to undergo 10 years of imprisonment but his sentence has already been suspended in that case.

9. To consider the submission made by the learned counsel for the petitioner pertaining to the long custody of the petitioner and his right to be considered for grant of regular bail, it would be relevant to refer to the judgment of Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* wherein the aforesaid issue with regard to delay in trial and its effect on the Right to Life under Article 21 of the Constitution of India has already been discussed. Para No.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. After hearing the learned counsel for the parties and considering the stage of trial and long incarceration of the petitioner, which is for 3 years 4 months and 8 days, this Court is of the considered view that the petitioner deserves the concession of regular bail in the light of Article 21 of the Constitution of India and also in view of the aforesaid judgment of Hon’ble Supreme Court of India. The mere fact that the petitioner is convicted in one



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case under the NDPS Act, cannot become a ground for denial of bail to him.

14. Consequently, 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.

15. 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 present petition.

16.12.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |