

CRM-M No. 19618 of 2024

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Sr. No. 215

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.19618 of 2024

Date of Decision: 29.04.2024

Ankit Sharma

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. G.S. Randhawa, Advocate,
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

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 Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.8, Police Commissionerate Jalandhar, District Jalandhar, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for more than 02 years and 05 months. He submitted that it is the case where as per the allegations the police apprehended one co-accused Onkar Singh @ Raju when he was on his Activa Scooter and has confiscated 3000 Tramadol tablets from him. Thereafter on his information, raid was conducted at his house which was rented by one of the co-accused

namely Honey and the petitioner and one more co-accused were there in the house. The recovery was effected from the almirah on the disclosure statement of the petitioner and co-accused. Learned counsel submitted that it is the case where the petitioner was stated to be only present in the house whereas neither it has been stated that the recovery was effected from his person nor the house belongs to him nor has he taken the house on rent, but other co-accused namely Honey has rented the house. He further submitted that the petitioner is having clean antecedents as he was not involved in any other case and otherwise also the main accused, who was initially apprehended namely Onkar Singh @ Raju has since been granted benefit of regular bail by this Court vide order dated 08.04.2024 passed in CRM-M-16070-2024 (Annexure P-3). He submitted that the primary reason for the grant of bail to the aforesaid co-accused namely Onkar Singh @ Raju was that despite framing of charges on 23.05.2022 only two witnesses were examined out of which one was examined fully and one was examined partially and despite 01 year and 10 months after framing of charges, the trial was not progressing in a proper manner and there was no justification coming forth from the State counsel as to why prosecution witnesses are not stepping into the witness box.

3. This Court on the basis of judgment 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 had granted the benefit of bail to the aforesaid co-accused Onkar Singh @ Raju. He submitted that the petitioner is not only at parity with Onkar Singh @ Raju, but rather he is at a better footing because from the person of the petitioner no recovery has been effected. He also submitted that even now more than 02 years and 5 months has elapsed after framing of the charges and there is no progress in the trial. He further submitted that considering the aforesaid custody and also the alleged role of the petitioner and the stage of the trial, the petitioner will be considered for grant of regular bail.

4. On the other hand, learned stated counsel, on instructions from ASI Jagir Singh, submitted that so far as the custody of the petitioner is concerned, the same is not disputed that he is in custody for 02 years and 05 months. It is submitted that only two prosecution witnesses have been examined out of which one has been examined partially. So far as the parity of the petitioner with co-accused Onkar Singh @ Raju is concerned, he submitted that the petitioner cannot be considered at parity with other co-accused because of the reason that from the aforesaid co-accused, there was recovery of 3000 tablets of Tramadol, whereas from the present petitioner and the other co-accused when the raid was conducted at the house then there was recovery of 93000 Tramadol tablets from the almirah and therefore considering the quantity of the tablets, the petitioner is not at parity with the co-accused Onkar Singh @ Raju. He also submitted that so far as the antecedents of the petitioner are concerned, the petitioner is not

involved in any other case whatsoever. It is also stated that bar of Section 37 of the NDPS Act will apply in the present case.

5. I have heard learned counsel for the parties.

6. It is the case where the petitioner is in custody for 02 years and 05 months. Charges were framed on 23.05.2022 and almost after 01 year and 11 months has elapsed and only two prosecution witnesses out of which one is stated to have been examined partially. This Court had occasion to deal with the petition of other co-accused namely Onkar Singh @ Raju which was allowed by Annexure P-3 primarily on the ground that large time had elapsed after framing of the charges and no justification came forth from the State counsel as to why the prosecution witnesses are not stepping into the witness box. Even now as per learned State counsel, the stage of the trial is same. Today again, there is no explanation from learned State counsel that as to why the prosecution witnesses are not being examined despite various opportunities. It appears that the trial has been delayed at the end of the prosecution witnesses who are police officials and not because of the fault of the petitioner.

7. 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 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”.

8. 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.

9. 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.”

10. The Hon'ble Supreme Court again in Rabi Prakash's case (supra) 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.”

11. After hearing learned counsel for the parties, this Court deems it fit and proper to grant concession of regular bail to the petitioner especially on the ground of custody and parity and in view of the fact that the petitioner is having clean antecedents, has faced incarceration for more than 02 years, and also the fact that no recovery has been effected from the person of the petitioner and the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of Hon’ble Supreme Court.

12. 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.

13. However, anything observed hereinabove shall not be treated

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as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

29.04.2024 (JASGURPREET SINGH PURI)
monika JUDGE

Whether speaking/reasoned No
Whether reportable Yes/No