

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

CRM-M-20085-2024(O&M)

Date of Decision: 30.04.2024

Sarabjit Singh @ Sabi

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.P.S. Khaira, 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 grant of regular bail to the petitioner in FIR No.103 dated 17.07.2021, under Sections 21, 25, 27(A), 29/61/85 of NDPS Act (Sections 27, 31 of NDPS Act), registered at Police Station STF Phase-4, Mohali, District SAS Nagar, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 2 years and 10 months and as per the allegations, there had been a recovery of 417 grams of heroin from him. He submitted that the petitioner has been falsely implicated in the present case in view of the fact that earlier he was involved in one case under the NDPS Act in which he is already on bail. He also submitted that it is a case where the trial Court framed charges on 22.03.2022 which is more than 2 years and 1 month but till date only two prosecution witnesses have been examined and that too only formal witnesses and no material witness has been examined in the present case. He submitted that as per the allegations, the police party

had apprehended the petitioner which consisted of number of police officials including one ASI Mohammad Sadiq and the aforesaid ASI Mohammad Sadiq has rather been given up by the prosecution and those two witnesses who have been examined were only formal witnesses and there is no justification as to why for more than two years after the framing of charges, the prosecution witnesses who are none other but the police officials did not care to depose before the trial Court. He also referred to the various orders passed by the learned trial Court which have been attached with the present petition to show that rather number of times bailable warrants were issued to the material witnesses including the I.O but they did not care to depose before the learned trial Court despite repeated bailable warrants issued against them. He submitted that considering his total custody of 2 years and 10 months, he may be considered for grant of regular bail. He also referred to 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 v. The State of Uttar Pradesh*, 2023 SCC Online SC 918 and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* in this regard.

4. On the other hand, Mr. Adeshwar Singh Pannu, learned AAG, Punjab has submitted on instructions from ASI Gulshan Kumar that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that after the framing of the charges on 22.03.2022 only two witnesses have been examined out of which one was the witness who had deposited the sample one was the author of the FIR and one of the police personnel who was part of the police party namely, ASI Mohammad Sadiq

has been given up by the prosecution. He also submitted that none of the officials who were part of the police party have been examined. He has however opposed the grant of bail to the petitioner on the ground that since the recovery falls in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He also submitted that the petitioner is involved in one more case under the NDPS Act.

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

6. It is a case where the petitioner has already faced incarceration for 2 years and 10 months and the charges in the present case were framed on 22.03.2022 which is almost 2 years and 1 month ago but till date the material witnesses have not been examined, as per learned counsel for the parties. No witness who was a part of the police party has been examined and rather one police official namely, ASI Mohammad Sadiq has been given up by the prosecution. This Court has raised a query to the learned State counsel as to what was the justification as to why in the present case the prosecution witnesses are not coming forth for deposition before the learned trial Court despite the fact that for more than two years have elapsed after the framing of the charges and despite the fact that the trial Court had issued repeated bailable warrants against them to which he could not give any justification even after seeking instructions from the official who is present in the Court.

7. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue.

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”.

8. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. The relevant portion of the aforesaid judgment contained in para No.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. 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. Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (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.

11. After hearing the learned counsels for the parties, this Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner which is 2 years and 10 months and the stage of the trial, 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.
12. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.
13. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other case.
14. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

30.04.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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