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

CRM-M-21483-2024

Date of Decision: 07.05.2024

Gurbax Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arshdeep, Advocate for the petitioner.

Mr. A.S. Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.85 dated 03.07.2022, under Section 22 of the NDPS Act, 1985 (Section 29 of the NDPS Act added later on), registered at Police Station Lakho Ke Behram, District Ferozepur.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 1 years and 10 months and as per the allegation, there had been a recovery of 1720 tablets of *Tramadol* from the motorcycle of the petitioner. He further submitted that in the present case, the charges were framed by the learned trial Court on 11.04.2023 and thereafter on 26.10.2023 because some of the other co-accused were apprehended later on and till date only 3 out of 11 prosecution witnesses have been examined. He also submitted that the petitioner has clean antecedents and is not involved in any other case.

He submitted that in view of the aforesaid long incarceration and the stage of



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trial where the prosecution witnesses, who are none other but the police officials, are not coming forth to depose before the Court, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the facts and circumstances of the present case and also in the light of the judgments of Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)", 2023 AIR(SC) 1648, "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" 2023 SCC Online SC 918 and "Rabi Prakash Vs. The State of Odisha" in *Special Leave to Appeal (Criminal) No.4169 of 2023*.

3. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab on instructions from ASI Roshal Lal, who is present in the Court, submitted that it is correct that the petitioner has faced incarceration for 1 year and 10 months and it is also correct that the charges were framed in the present case on 11.04.2023 and thereafter on 26.10.2023 and till date 3 out of 11 cited prosecution witnesses have been examined out of which, one is an investigating officer and other two are formal witnesses. He further submitted that as per his instructions the petitioner is not involved in any other case and has clean antecedents. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner was 1720 tablets of *Tramadol* and the total weight of the tablets is more than 700 grams which falls in the category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. It is a case where the petitioner has faced incarceration for 1 year



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and 10 months and has clean antecedents and is not involved in any other case. Although, recovered quantity from the petitioner falls in the category of commercial quantity but the charges in the present case were framed on 11.04.2023 and again on 26.10.2023 and till date only 3 prosecution witnesses have been examined. The delay in the trial has not been attributable to the petitioner because as per the learned State Counsel, further charges were framed because some of the other co-accused were apprehended later on.

6. Since, the petitioner has already faced incarceration for 1 year and 10 months and he stated to be having clean antecedents, the judgment of Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)*** would be applicable in the present case. The relevant para 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.”

7. Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain's case (supra)*** also discussed the issue with regard to delay in trial and the long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. The relevant Paras of the aforesaid judgment 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.”

8. Similarly, Hon’ble Supreme Court in ***Dheeraj Kumar Shukla’s case (supra)*** has opined 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.”

9. Thereafter, Hon’ble Supreme Court in ***Rabi Prakash’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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.”

10. After hearing the learned counsels for the parties and considering the fact that the petitioner is having clean antecedents and is in custody for 1 year and 10 months and after the framing of the charges only three witnesses have been examined, this Court is of the view that 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 and also in view of the aforesaid judgments of Hon’ble Supreme Court of India. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

11. 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.

12. 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.

07.05.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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