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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23501-2024
Date of decision: 05.08.2024

GURPREET SINGH ALIAS SABI

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

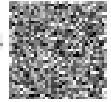
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Charanpreet Singh, Advocate for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

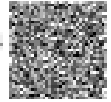
JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.08 dated 24.01.2022, under Sections 21, 25 and 29 of the NDPS Act, registered at Police Station Sadar Moga, District Moga, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 25.01.2022, which is more than 2½ years. He further submitted that in the present case the allegations were that the police had apprehended one co-accused from whom there was a recovery of 50 grams of *heroin* and it was on his disclosure statement that the name of the petitioner was nominated and as per the prosecution, there had been a recovery of 260 grams of *heroin* from the petitioner as well, which although falls in the category of commercial quantity but is marginally higher than the defined commercial quantity of *heroin* under



the NDPS Act. He further submitted that the trial of the case is not progressing at all and the charges in the present case were framed by the learned trial Court on 18.08.2022, which is almost 2 years ago and till date only 4 prosecution witnesses have been examined out of total cited 20 prosecution witnesses and none of the aforesaid 4 prosecution witnesses has been examined in full because two of them have been examined-in-chief only and the remaining two have been examined partially in cross-examination as well. He further submitted that the petitioner has been falsely implicated in the present case because he is involved in one more case under the NDPS Act in the State of Madhya Pradesh. He also submitted that considering the long custody of the petitioner and also considering the present case in light of the judgment of Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, 2022 (10) SCC 51**, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that it is correct that the petitioner is in custody from 25.01.2022, which is more than 2½ years and about 2 years have elapsed after the framing of the charges and only 4 prosecution witnesses have been examined and they also have not been examined in full. He further submitted that the reason for the delay of the trial was that the petitioner is involved in one more case under the NDPS Act in the State of Madhya Pradesh and he was not brought on production warrant from time to time. He also submitted that considering the fact that the recovery from the petitioner was 260 grams of *heroin*, although marginally higher than the commercial quantity as defined under the NDPS Act, the petitioner does not deserve the concession of regular bail.



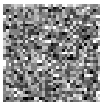
4. I have heard the learned counsels for the parties.

5. The petitioner is in custody for more than 2½ years and about 2 years have elapsed after the framing of the charges by the learned trial Court on 18.08.2022 but only 4 prosecution witnesses have been examined and that too not examined in full. The petitioner was nominated on the basis of disclosure statement of a co-accused and from the said co-accused, there was an alleged recovery of 50 grams of *heroin* and after the arrest of the petitioner, there was a recovery of 260 grams of *heroin* from him, which is marginally higher than the commercial quantity as defined under the NDPS Act.

6. However, this Court would consider the prayer of the petitioner in view of the facts and circumstances, whereby the trial of the case has not progressed. 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”.

7. After hearing learned counsel for the parties, this Court is of the considered view that considering the aforesaid long custody of the petitioner, stage of the trial and the fact that about 2 years have elapsed after the framing of the charges and only 4 prosecution witnesses have been examined and that too partially, 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 the light of the aforesaid judgment of Hon’ble Supreme Court.

8. 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.

9. 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.

05.08.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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