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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23436-2024(O&M)
Date of Decision: 16.05.2024

(I)
Vikas

....Petitioner

Versus

State of Haryana

.....Respondent

CRM-M-23519-2024(O&M)

(II)
Naseeb

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Parshant Sethi, Advocate, for the petitioners.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. Both petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and prayer in both the cases is for the grant of regular bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.351 dated 17.05.2022, under Sections 20 C and 29 of NDPS Act,



registered at Police Station Hansi City, District Hansi, Haryana.

3. Learned counsel for the petitioners has submitted that both the petitioners are in custody from 17.05.2022 which is almost 2 years and submitted that in the present case charges were framed on 17.01.2023 which is almost 1 year and 4 months ago and till date no prosecution witness has been examined. He further submitted that as per allegation, the police on the basis of secret information pertaining to present two petitioners and two more co-accused had intercepted a car from where allegedly there was a recovery of about 1 quintal of *ganja*. He submitted that the allegation against the petitioner Vikas was that he was the driver of the car and the other petitioner namely, Naseeb was on the conductor seat of the car and there was one more accused namely, Jasbir who was sitting on the rear seat. He also submitted that the aforesaid co-accused namely, Jasbir has been extended the benefit of regular bail by this Court vide Annexure P-5 on 15.04.2024 primarily on the ground that after the framing of the charges which was more than 1 year ago not even a single prosecution witness has been examined and while referring 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 (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*, this Court had granted bail to the aforesaid co-accused Jasbir.

4. Learned counsel further submitted that although the petitioner may not be exactly at parity with the aforesaid co-accused Jasbir because of



the fact that the aforesaid co-accused Jasbir was sitting on the rear seat, whereas petitioner Vikas was driver and the petitioner Naseeb was on the conductor seat but the reasons on the basis of which the aforesaid co-accused Jasbir was granted bail would apply to the present case as well because now even about 1 year and 4 months have elapsed after the framing of the charges but not even a single prosecution witness has been examined. He further submitted that both the petitioners are not involved in any other case and have got clean antecedents and the police has falsely implicated the petitioners in the present case. He submitted that the bar of Section 37 of the NDPS Act will not apply to the present petitioners in view of the aforesaid judgments of Hon'ble Supreme Court and in the light of Article 21 of the Constitution of India because the fault in delay of trial on the face of it is on the prosecution and not upon the petitioners. He also submitted that rather there were some other co-accused who were on the disclosure statement and they have also been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexures P-6 to P-8 and therefore, the petitioners may be considered for the grant of regular bail.

5. On the other hand, Mr. Gaurav Jindal, learned Additional Advocate General, Haryana submitted that it is a case where although both the petitioners are in custody for about 2 years but their role is different from that of the other co-accused who have been granted bail. He submitted that the petitioner Vikas was the driver of the car and the petitioner Naseeb was on the conductor seat of the car and there had been a recovery of about 1 quintal of ganja from the car and therefore, it was within their knowledge as they were carrying *ganja*. He has however opposed the grant of bail to



both the petitioners on the ground that since the recovery falls in the category of commercial quantity, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act. So far as the stage of the trial is concerned, he also submitted that after the framing of the charges about 1 year and 4 months have elapsed but no prosecution witness has been examined. So far as the antecedents of the petitioner Naseeb is concerned, he is not involved in any other case and so far as the antecedents of the petitioner Vikas is concerned, he is also not involved in any other case under the NDPS Act but he is involved in two more cases out of which one under Section 323 IPC and one under Section 3 of Immoral Traffic (Prevention) Act.

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

7. It is a case where both the petitioners have already faced incarceration for 2 years and charges in the present case were framed on 17.01.2023 which is almost 1 year and 4 months ago but till date no prosecution witness has been examined, as per learned counsel for the parties. On a query being raised to the learned State counsel as to what was the justification as to why no prosecution witness has been examined even after 1 year and 4 months have elapsed after the framing of the charges to which he could not give any justification.

8. 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”.

9. 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.

10. 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.”

11. 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.

12. One of the other co-accused namely, Jasbir has been granted bail by this Court vide Annexure P-5. Although the petitioners are not exactly at parity with the aforesaid co-accused because the petitioner Vikas was the driver of the car and the other petitioner namely, Naseeb was on the conductor seat of the car but the principle of law which has been laid down by the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*, *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)*, *Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Supra)* and *Rabi Prakash Versus State of Odisha (Supra)* with regard to affecting of right to life in case of delay in trial, then the bar contained under Section 37 of the NDPS Act will not apply. In the present case, no justification has come forth as to why about 1 year and 4 months have elapsed after the framing of the charges but no prosecution witness has been examined

13. After hearing the learned counsels for the parties, this Court is of the view that considering the judgments of Hon'ble Supreme Court as



trial, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the light of Article 21 of the Constitution of India.

14. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to both the petitioners.

15. Consequently, both the petitions are allowed. Both the petitioners 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.

16. 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 petitions only.

16.05.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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