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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29301-2024 (O&M)
Date of decision: 19.07.2024

SADHU SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Navinder Jit Singh Dandiwal, Advocate
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

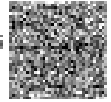
CRM-26751-2024

Prayer in this application is for placing on record the zimni orders
passed by the learned trial Court as Annexure P-4.

For the reasons mentioned in the application, the same is allowed.
The zimni orders passed by the learned trial Court are taken on record, subject
to all just exceptions.

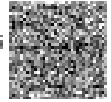
CRM-M-29301-2024

1. The present is a third petition filed under Section 439 of the Code
of Criminal Procedure for the grant of regular bail to the petitioner in FIR
No.79 dated 20.09.2021, under Sections 22/29/61/85 of the NDPS Act,
registered at Police Station Ajitwal, District Moga, Punjab.



2. Learned counsel for the petitioner submitted that the petitioner is in custody for 2 years and 1 month and as per the allegations, there was a recovery of 350 intoxicant tablets having *Etizolam* salt weighing 47.60 grams from the petitioner. He further submitted that although the aforesaid recovery falls in the category of commercial quantity but it is a case where as per the allegations, the petitioner was coming on foot and he was intercepted by the police party and on seeing the police party, he threw the packet on the ground and the aforesaid intoxicant tablets were also not marked tablets but they were loose tablets and in this way, the petitioner has been falsely implicated in the present case because of the reason that earlier he was involved in four more cases, out of which in three cases he has been convicted. He further submitted that be that as it may, charges in the present case were framed by the learned trial Court on 15.09.2022, which is almost 1 year and 10 months ago and only 2 prosecution witnesses have been examined out of total cited 12 prosecution witnesses and those two witnesses who have been examined are formal witnesses and not material witnesses because one of the witnesses was a person who generated the unique code while depositing the sample and the second witness was the author of the FIR. He further submitted that there is no justification as to why for about two years, the prosecution witnesses have not been examined after the framing of the charges by the learned trial Court.

3. Learned counsel for the petitioner also submitted that in fact a perusal of the FIR would show that such kind of stereotyped FIRs are being registered throughout in the State of Punjab, whereby a stereotyped story is made that a person was coming from the opposite direction and police party

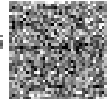


saw him and he threw intoxicant tablets on the ground and not once but hundreds of such FIRs have been lodged in the State of Punjab and the present petitioner is also a victim of the aforesaid stereotyped FIR. He has referred to judgments of the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]** and **“Mohd. Muslim @ Hussain versus State (NCT of Delhi)”, 2023 AIR (SC) 1648** to contend that since the trial of the case is not progressing, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that it is correct that the petitioner is in custody for 2 years and 1 month and after the framing of the charges by the learned trial Court on 15.09.2022, only two prosecution witnesses have been examined. He further submitted that the petitioner is a habitual offender and is involved in four more cases and the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act since the quantity recovered from the petitioner falls in the category of commercial quantity.

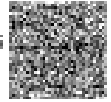
5. I have heard the learned counsel for the parties.

6. The petitioner is in custody for 2 years and 1 month and after the framing of the charges by the learned trial Court on 15.09.2022, only two prosecution witnesses have been examined out of total cited 12 prosecution witnesses. Learned counsel for the petitioner has placed on record the zimni orders which have been passed by the learned trial Court after the framing of the charges which would show that for number of times the petitioner and other co-accused were not produced before the learned trial Court by the jail



authorities and their judicial remand was extended. Even on other occasions, bailable warrants were issued to the prosecution witnesses but they did not appear. Reference in this regard was made by the learned counsel for the petitioner to the order passed by the learned trial Court on 09.10.2023, whereby the learned trial Court had directed that bailable warrants to HC Sandeep Kumar and ASI Sewak Singh be issued in the sum of Rs.5000/-. Thereafter, again on 15.11.2023 it has been so recorded by the learned trial Court that ASI Sewak Singh has been served but he has sent a request. It was further ordered that HC Sandeep Kumar and ASI Sewak Singh be again summoned through bailable warrants in the sum of Rs.5000/-. Thereafter on 14.12.2023, no prosecution witness was present and rather an application was filed for issuance of production warrants of accused Bharpur Singh and judicial custody of the petitioner was extended. It has been contended that the learned trial Court had been adjourning the case for about 2 years either because of non-production of the petitioner or other co-accused before the Court or because of non-appearance of the prosecution witnesses for deposition despite bailable warrants being issued against them.

7. During the course of arguments, a specific query was raised to the learned State counsel as to what was the justification as to why the petitioner and other co-accused could not be produced before the learned trial Court at the time of hearing despite production warrants being issued and also as to why the prosecution witnesses are not caring to depose before the learned trial Court despite the fact that twice bailable warrants were issued against them, to which he could not offer any justification even after seeking instructions.

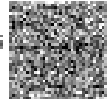


8. Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)** has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“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”.

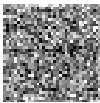
9. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case (supra)** has dealt with this issue with regard to delay in trial and long custody of the accused person *vis-a-vis* the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.19 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.

10. Therefore, considering the aforesaid totality and circumstances of the present case, this Court is of the considered view that the mere fact that the petitioner is involved in other cases and has also been convicted would not become a ground for denial of regular bail to the petitioner. Considering the stage of the trial and the fact that prosecution witnesses are not appearing before the learned trial Court despiteailable warrants being issued to them, it is clear that the trial has been delayed at the instance of the prosecution and not because



of the present petitioner and therefore, 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.

11. 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.

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.

19.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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