



216
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29585-2024(O&M)
Date of Decision: 03.07.2024

Sumit @ Lala

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Aditya Sanghi, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fifth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.03 dated 06.01.2021, under Sections 22C/27-A of NDPS Act, registered at Police Station Civil Lines Hisar, District Hisar, Haryana.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody from 10.01.2021 which is almost 3½ years and in the present case, the charges were framed on 18.08.2021 which is almost 3 years ago but till date only 13 witnesses out of total cited 28 witnesses have been examined. He submitted that although the present is a successive bail petition but now considering the long incarceration of the petitioner, the present successive bail petition is maintainable. He submitted that it is a case where the allegations were pertaining to one of the co-



accused namely, Aman from whom there has been a recovery 76000 tablets of Tramadol and the allegations against the petitioner were on the basis of the disclosure statement of the aforesaid co-accused namely, Aman that the aforesaid tablets were given by the petitioner to the aforesaid co-accused Aman. He submitted that the reason as to why the petitioner was falsely implicated in the present case was that he was earlier involved in two more cases under the NDPS Act, out of which in one case he has already been acquitted. He also submitted that there was another allegation against the petitioner that an amount of Rs. 90,000/- was received in the bank account on the asking of the petitioner by way of Google Pay. He submitted that the account from where the aforesaid amount was transferred is of a private prosecution witness who has been examined now and he has not supported the prosecution version and has been declared as hostile. He also referred to 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* and has submitted that considering the long incarceration of the petitioner, he may be considered for grant of regular bail.

3. On the other hand, Mr. Gaurav Jindal, learned Additional Advocate General, Haryana has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the charges in the present case were framed about 3 years ago and 13 prosecution witnesses have been examined. He has however opposed the



grant of bail to the petitioner on the ground that there has been a huge recovery from the co-accused namely, Aman 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 already faced incarceration for about 3 ½ years and as per the allegations, the petitioner was nominated on the basis of disclosure statement of a co-accused namely, Aman from whom there has been a huge recovery. However, the name of the petitioner surfaced on the basis of disclosure statement of a co-accused. Another allegation against the petitioner was that an amount of Rs. 90,000/- was received in the bank account on the asking of the petitioner but as per the learned counsel for the petitioner the account from where it was transferred is of a private prosecution witness who has been examined and he has not supported the prosecution version and has been declared as hostile. Be that as it may, the petitioner has already faced incarceration for about 3 ½ years and as per the learned counsel for the parties, the petitioner was involved in two more cases under the NDPS Act out of which in one case he has since been acquitted.

6. 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”.

7. 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.

8. 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.”

9. 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.

10. After hearing the learned counsels for the parties, this Court is of the view that considering the judgments of Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner, 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 especially in view of the fact that even as per the allegations, there has been no recovery of any contraband from the petitioner.

11. 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.

12. 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.



13. 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.

03.07.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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