

CRM-M-32242-2023 (O&M)

202

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32242-2023 (O&M)
Date of Decision: 18.04.2024

Harwinder Singh alias KajuPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mrs. Anupam Bhanot, Advocate
for the petitioner.

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

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.196 dated 07.08.2021, under Section 21 of the NDPS Act, 1985, registered at Police Station City Tarn Taran, District Tarn Taran.
2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 2 years and 7 months and as per the allegation, there had been a recovery of 415 grams of *Heroin* from the present petitioner and 288 grams of *Heroin* from the other co-accused, namely, Buta Singh. She submitted that the aforesaid co-accused, namely, Buta Singh has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-12462-2023 on 24.01.2024 on the ground of delayed trial. She further submitted that it is a case where the petitioner has been falsely implicated because of the fact that earlier he was involved in three more cases

under the NDPS Act, out of which, in two cases he has already been acquitted and in one case he was convicted and one more case under the Gambling Act. She further submitted that in the present case, the charges were framed by the learned trial Court on 20.05.2022 which is almost 1 year and 11 months ago, but till date only 1 out of 17 prosecution witnesses has been examined. She submitted that the witness, who has been examined during the aforesaid long period of time, is not even a material witness nor a part of police party, who had recovered the contraband, but was a person, who had deposited the sample with the laboratory. She submitted that in view of the aforesaid long incarceration and the stage of 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 the police official, who is present in the Court has stated that it is correct that the petitioner has faced incarceration for 2 years and 7 months and it is also correct that the charges were framed in the present case on 20.05.2022 which is almost 1 year and 11 months ago and only one prosecution witness, who had deposited the sample with the laboratory, has been examined. He has however opposed the grant of regular bail to the

petitioner on the ground that the recovered quantity from the petitioner was 415 grams of *Heroin*, 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. So far as the parity of the petitioner with the aforesaid co-accused, namely, Buta Singh is concerned, he has not disputed the same. He has opposed the bail also on the ground that the petitioner is a habitual offender and is involved in four more cases, out of which, three cases are pertaining to the NDPS Act, although he has been acquitted in two cases.

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

5. It is a case where the petitioner has faced incarceration for 2 years and 7 months and the charges in the present case were framed on 20.05.2022 which is almost 1 year and 11 months ago and till date only one prosecution witness, who had deposited the same with the laboratory, has been examined but neither the recovery witness nor the police party, who had allegedly apprehended the petitioner, has been examined.

6. During the course of arguments, this Court raised a specific query to the learned AAG, Punjab that as to what is the justification with regard to non-appearance of the prosecution witnesses before the trial Court to which he could not offer any justification.

7. Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.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.”

8. 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."

9. 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.”

10. 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.”

11. In view of the aforesaid facts and circumstances wherein the custody of the petitioner has come out to be 2 years and 7 months and almost 1 year and 11 months have elapsed after the framing of the charges, only one witness has been examined, this Court is of the considered 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 the Hon’ble Supreme Court of India on the issue. Apart from the above, the petitioner is also stated to be at parity with the aforesaid

CRM-M-32242-2023 (O&M)

co-accused, namely, Buta Singh, who has since been extended the benefit of regular bail by a Co-ordinate Bench of this Court. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

12. 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.

13. 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.

18.04.2024

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

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