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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31713-2023
Date of decision: 11.01.2024

NAVJOT SINGH @ NAV

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.323 dated 09.11.2020, under Sections 22-C and 29 of the NDPS Act, registered at Police Station Kathu Nangal, District Amritsar, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 2 years and 11 months. Learned counsel for the petitioner further submitted that the petitioner has clean antecedents and is not involved in any other case under the NDPS Act and he has been falsely implicated by the police in the present case. He also submitted that earlier the petitioner was granted interim bail by this Court on the ground of surgery of his wife and he availed the interim bail and he has now surrendered back in time and has not

violated any of the conditions of interim bail and the aforesaid custody period is after excluding the period of two months of interim bail. He also submitted that as per the prosecution story, the police had apprehended two persons, namely, Gursahib Singh and Avtar Singh and from them there was recovery of 11,400 intoxicant tablets and 10,200 intoxicant tablets, respectively, and both the aforesaid co-accused, who were apprehended along with the aforesaid contraband have since been released on default bail under Section 167 Cr.P.C. Thereafter, one of the aforesaid co-accused, namely, Gursahib Singh from whom recovery was effected disclosed the names of several persons out of which one co-accused was Sanjeev Kumar @ Raja and the aforesaid Sanjeev Kumar @ Raja disclosed the name of the present petitioner and in this way, the name of the petitioner has cropped up only on the basis of second disclosure statement. He further submitted that thereafter, on the basis of disclosure statement of the petitioner, some of the other co-accused, namely, Dilpreet Singh and Surinder Singh @ Sonu were nominated from whom there was a recovery of 3,46,000 intoxicant tablets. He further submitted that there is no material available with the prosecution to connect the petitioner with the present offence except for disclosure statement of co-accused, which is otherwise not admissible in evidence *per se* in view of the judgment of Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1.** He also submitted that after the arrest of the petitioner, a recovery of about 49,000 intoxicant tablets were planted upon the petitioner by stating that the same was recovered from the house of the petitioner.

3. Learned counsel for the petitioner further submitted that be that as it may, the submission which he has made that the petitioner has clean

antecedents and is not involved in any other case under the NDPS Act and he has been falsely implicated in the present case by the police is further substantiated from the fact that in the present case the learned trial Court has framed charges on 06.06.2022 and more than 1 year and 7 months have elapsed and only one prosecution witness has been examined and the material witnesses are not coming forth for deposition despite summons and warrants being issued by the learned trial Court repeatedly. He further submitted that there is no justification as to why after putting the criminal law into motion, the police officials who are the prosecution witnesses have failed to depose before the Court and the net result of the same is that the petitioner had to face incarceration for about 2 years and 11 months for no fault of his. He has referred to a judgment of the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]** and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. He also referred to another judgment of Hon'ble Supreme Court in **"Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR (SC) 1648**, wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. He further referred to a judgment of Hon'ble Supreme Court in **"Dheeraj Kumar Shukla versus The State of Uttar Pradesh", 2023 SCC Online SC 918** and also a judgment of Hon'ble Supreme Court in **"Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023** to contend that long

custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

4. On the other hand, Mr. Rajiv Verma, DAG, Punjab submitted that it is correct that the petitioner is in custody for about 2 years and 11 months. He further submitted that so far as the antecedents of the petitioner is concerned, he has instructions to state that he is not involved in any other case under the NDPS Act but is involved in one case under the Prisons Act. He has filed short reply by way of an affidavit of Deputy Superintendent of Police, Sub-Division Majitha, District Amritsar (Rural) in Court today and the same is taken on record. While referring to the said short reply, he submitted that the petitioner has clean antecedents. He has however opposed the grant of regular bail to the petitioner on the basis of Section 37 of the NDPS Act since the quantity involved in the present case not only falls in the category of commercial quantity but also is a huge quantity.

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

6. It is a case where the petitioner is in custody from about 2 years and 11 months. Undoubtedly, the total recovery from all the accused in the present case is very large and so far as the petitioner is concerned, recovery from him is stated to be about 49,000 intoxicant tablets from his house. Therefore, this Court will deal with the applicability of Section 37 of the NDPS Act qua the present petitioner. The petitioner was nominated on the basis of disclosure statement of aforesaid co-accused, namely, Sanjeev Kumar @ Raja. After about six days, recovery of 49,000 intoxicant tablets was shown from the house of the petitioner at the instance of the petitioner himself. The petitioner is stated to be not involved in any other case under the NDPS Act except in one

case under the Prisons Act. The charges in the present case were framed by the learned trial Court on 06.06.2022 and more than 1 year and 7 months have elapsed and only one prosecution witness has been examined and the learned trial Court has been adjourning the case for summoning the prosecution witnesses and even issuedailable warrants as per the learned counsel for the petitioner. Therefore, the long custody of the petitioner itself would be a relevant factor for the purpose of application of Section 37 of the NDPS Act.

7. 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”.

8. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (**supra**) has dealt with the issue regarding 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.

9. The 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.”

10. The Hon'ble Supreme Court in **Rabi Prakash's case** (**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.”

11. In the peculiar facts and circumstances of the present case, the petitioner who is stated to be not involved in any other case under the NDPS Act has already faced incarceration for about 2 years and 11 months and more than 1 year and 7 months have elapsed after the framing of the charges and only one prosecution witness has been examined as per the learned counsel for the parties. The petitioner was nominated on the basis of disclosure statement of co-accused, namely, Sanjeev Kumar @ Raja. Apart from the above, it has been so stated in para No.8 of the aforesaid short reply filed by the State that there is a strong apprehension that the petitioner can misuse the concession of regular bail by absconding from the trial. However, during the course of arguments, a query was raised to the learned State counsel as to on what material and on what basis the strong apprehension has been expressed in the short reply particularly considering the fact that the petitioner has clean antecedents, to which he could not offer any explanation as to what was the material on the basis of which the

aforesaid apprehension has been expressed by the Deputy Superintendent of Police, Sub-Division Majitha, District Amritsar (Rural) in this regard. Another query was also raised to the learned State counsel as to what was the justification as to why after the framing of the charges on 06.06.2022, only one prosecution witness has been examined, which has resulted in prolonged incarceration of the petitioner for about 2 years and 11 months, to which also he could not offer any explanation.

12. Therefore, this Court is of the view that considering the aforesaid totality and circumstances of the present case, 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 judgments of the Hon’ble Supreme Court.

13. 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.

14. 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.

11.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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