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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32378-2024
Decided on: 14.08.2024

Joginder alias Chintu

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kartar Singh, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a third successive bail petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.291 dated 14.12.2021, under Sections 21-B, 27-A, 61 & 85 of the NDPS Act, registered at Police Station Bhuna, District Fatehabad.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for more than 2 years and 5 months and the charges in the present case were framed on 19.04.2023, which is almost 1 year and 4 months ago but till date, not even a single prosecution witness has been examined. He further submitted that the prosecution witnesses are deliberately not appearing before the Court for deposition because the petitioner has been falsely implicated in the present case. He also submitted that the reason as to why the petitioner was falsely implicated in the present case is that he is involved in a number of



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cases. He further submitted that even otherwise also as per the allegation, there was no recovery from the petitioner and the recovery of 100 grams of *Heroin* was effected from the co-accused, namely, Jatin and the allegation against the petitioner is that the aforesaid contraband was purchased from the petitioner and it was only after the petitioner was arrested that there was a recovery of 10 grams of *Heroin* from him. He also submitted that in the present case even otherwise also the petitioner was nominated on the basis of the disclosure statement of the aforesaid co-accused which is not admissible in evidence especially in view of the law laid down by Hon'ble Supreme Court in "*Tofan Singh Vs. State of Tamil Nadu*", 2021(1) RCR (Criminal) 1. He further submitted that so far as the aforesaid contraband of 10 grams of *Heroin* allegedly stated to be recovered from the petitioner after his arrest is concerned, the same is also not permissible.

3. Learned counsel for the petitioner further referred to 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 *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "*Rabi Prakash Vs. The State of Odisha*" to contend that considering the custody of the petitioner, alleged recovered quantity from him which is of a non-commercial quantity and the stage of the trial where almost 1 year and 4 months have elapsed after framing of the charges, not even a single prosecution witness has been examined, the bar of Section 37 will not apply to the present



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petitioner and therefore, the petitioner may be considered for grant of regular bail.

4. On the other hand, Ms. Dimple Jain, learned DAG, Haryana, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that after framing of the charges on 19.04.2023, not even a single prosecution witness has been examined till date. She referred to Para No.4 of the status report filed on behalf of the respondent/State and submitted that now show-cause notices have been issued by the Police Department to the summoned witnesses as to why they did not present themselves before the Court for the purpose of deposition. She has however opposed the grant of bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in as many as 28 more cases. So far as the recovery from the petitioner is concerned, she submitted that initially there was a recovery of 100 grams of *Heroin* from the co-accused, namely, Jatin, but it was thereafter when the petitioner was arrested on the basis of the disclosure statement of the aforesaid co-accused, then from him there was a recovery of 10 grams of *Heroin*.

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

6. It is a case where the total custody of the petitioner has come out to be more than 2 years and 5 months. The charges in the present case were framed on 19.04.2023, which is almost 1 year and 4 months ago and till date not even a single prosecution witness has been examined. A perusal of Para No.4 of the status report filed on behalf of the respondent/State would show that now some corrective measures have been taken by the Police Department



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by issuing show-cause notices to the summoned witnesses. However, be that as it may, the same cannot correct the fault which have been attributable to the prosecution witnesses and there is no justification as to why the prosecution witnesses failed to appear before the Court for deposition despite the fact that at their instance, the criminal law is set into motion.

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



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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



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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. An argument which was raised by the learned State Counsel that the petitioner is involved in 28 more cases of similar nature would also be of not avail to the respondent/State in view of the judgment of Hon’ble Supreme Court in “**Prabhakar Tewari Vs. State of U.P. and another**” 2020 (11) SCC 648.

10 After hearing the learned counsels for the parties and considering the aforesaid peculiar facts and circumstances whereby the custody of the petitioner comes out to be more than 2 years and 5 months and the alleged recovery from the petitioner is stated to be only 10 grams of *Heroin* which does not fall in the category of commercial quantity and the fact that after framing of the charges, almost 1 year and 4 months have been elapsed, not even a single prosecution witness has been examined, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of Hon’ble Supreme Court of India and he deserves the concession of regular bail.

11. Consequently, the present petition is allowed and the petitioner is



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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.

12. 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.

14.08.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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