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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 10.01.2024

(I) CRM-M-44686-2022

KARAJ SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-41207-2023

AMARJEET SINGH ALIAS AMBI ALIAS JASPAL ALIAS PALI

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A. S. Brar, Advocate
for the petitioner in CRM-M-44686-2022.

Mr. Satnam Singh, Advocate for
Mr. Vidit Bansal, Advocate
for the petitioner in CRM-M-41207-2023.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of regular bail.

2. CRM-M-44686-2022 has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to petitioner-Karaj Singh in FIR No.124 dated 12.09.2021, under Section 21 (22) of the NDPS Act, registered at Police Station Sadar Moga, District Moga, Punjab. CRM-M-41207-2023 has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali in FIR No.124 dated 12.09.2021, under Section 21, 29, 61, 85 of the NDPS Act, registered at Police Station Sadar Moga, District Moga, Punjab.

3. Both the learned counsels for the petitioners have submitted that both the petitioners are in custody for about 2 years and 25 days. They further submitted that CRM-M-44686-2022 is a second successive regular bail petition filed by petitioner-Karaj Singh, whereas CRM-M-41207-2023 is a successive third regular bail petition filed by petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali and earlier the first bail petitions filed by both the petitioners were dismissed by this Court on 15.07.2022 vide Annexure P-3 by passing a common order and second successive regular bail petition filed by petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali was dismissed as withdrawn on 15.03.2023. They also submitted that now about 1½ years have elapsed after the dismissal of the aforesaid regular bail petition and there are changed circumstances particularly pertaining to the long custody of both the petitioners.

4. Learned counsel for the petitioner-Karaj Singh submitted that the petitioner is in custody for about 2 years and 25 days and that there was recovery of 2 kgs. of *heroin* from the India-Pakistan border and consequent thereupon, one Sona Singh was arrested. He further submitted that so far as the

present petitioner is concerned, he was thereafter arrested purely on the basis of suspicion and the role which the prosecution has assigned to the petitioner was that after his arrest, there was a recovery of mobile phone from him, wherein there was inscribed PAK and it was only on that basis that there was suspicion against the petitioner. He also submitted that in fact the aforesaid phone was planted upon the petitioner and the petitioner is not having any criminal background and he is having clean antecedents and is not involved in any other case. He further submitted that since the entire prosecution case so far as the petitioner-Karaj Singh is concerned, the same is based upon only on suspicion and he has already suffered incarceration for more than 2 years and therefore, he may be considered for the grant of regular bail. He further submitted that there has been no recovery of any contraband from the petitioner at all and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view of the fact that in the present case the charges were framed on 21.07.2022 and almost 1½ years have elapsed after the framing of the charges and not even a single witness has been examined by the prosecution despite the fact that evenailable warrants were issued against the prosecution witnesses by the learned trial Court. He further submitted that there is no justification as to why the police officials, who were the prosecution witnesses and who have themselves put the criminal law into motion did not care to depose before the Court for long period of 1 ½ years after the framing of the charges since till date not even a single witness has been examined. 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.

5. Learned counsel for the petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali submitted that so far as the petitioner is concerned, his name was nominated purely on the basis of disclosure statement of the aforesaid co-accused, namely, Sona Singh and even qua the present petitioner, there had been no recovery and it was purely on the basis of the disclosure statement of the co-accused that he had been nominated and now he has also faced incarceration for more than 2 years and there is no material available with the prosecution to connect the petitioner with the present offence. He further submitted that although the petitioner is involved in one more FIR under the NDPS Act but that itself cannot become a ground for denial of bail to the petitioner since it is a case of the petitioner that the present case was planted upon the petitioner on the basis of the disclosure statement of co-accused,

which is otherwise not admissible in evidence *per se* especially in view of the judgment of the Hon'ble Supreme Court in *Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1.*

6. On the other hand, Mr. Rajiv Verma, DAG, Punjab submitted that both the petitioners have faced incarceration for more than 2 years and after the framing of the charges on 21.07.2022, which is almost 1½ years, no prosecution witness has been examined. He has filed a short affidavit of the Senior Superintendent of Police, Moga today in the Court, in which it has been so stated that no prosecution witness has been examined till date despiteailable warrants having been issued against many of them. He also submitted that as per the said short affidavit, now an action has been taken against one police official and he has been suspended. He however submitted that there had been a recovery of 2 kgs. of *heroin* from the fields of the India-Pakistan border, although the same were not recovered from the present two petitioners but since it was a case of international drug racket, wherein smuggling of heroin was involved, the petitioners are not entitled for the grant of regular bail. He also submitted that one of the petitioners, namely, Amarjeet Singh @ Ambi @ Jaspal @ Pali is involved in one more case under the NDPS Act and the bar contained under Section 37 of the NDPS Act will also apply in the present case.

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

8. CRM-M-44686-2022 is a second successive regular bail petition filed by petitioner-Karaj Singh, whereas CRM-M-41207-2023 is a successive third regular bail petition filed by petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali and earlier the first bail petitions filed by both the petitioners were

dismissed by this Court on 15.07.2022 vide Annexure P-3 by passing a common order and second successive regular bail petition filed by petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali was dismissed as withdrawn on 15.03.2023. Considering the prolonged custody of the petitioners and the stage of the trial, this Court is of the view that the present two successive bail petitions are certainly maintainable. The custody of both the petitioners is not in dispute and it is also not in dispute that the petitioner-Karaj Singh is not involved in any other case, whereas petitioner-Amarjeet Singh @ Ambi @ Jaspal @ Pali is involved in one more case under the NDPS Act. Admittedly, there is no recovery from both the petitioners but the allegations were that there was a recovery of 2 kgs. of *heroin* from the India-Pakistan border and thereafter, there was a recovery of 20 grams of *heroin* from one of the other co-accused, namely, Sona Singh.

9. The charges in the present case were framed on 21.07.2022, which is almost 1 ½ years ago but no prosecution witness has been examined till date. Aforesaid short affidavit of SSP, Moga has also been filed in the Court today, wherein it has been stated that due to negligence, the prosecution witnesses have not deposed before the Court despite the fact that repeated summons and bailable warrants were issued against them. It is also stated in the aforesaid short affidavit that one of the police official has since been suspended as well.

10. 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”.

11. 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.*

12. 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.”

13. 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.”

14. After hearing learned counsel for the parties and considering the aforesaid facts and circumstances of the present case, the custody of both the

petitioners, antecedents and the stage of the trial, wherein about 1 ½ years have elapsed after the framing of the charges and 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 apply to both the petitioners 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. Even otherwise also, it is stated by both the learned counsels for the parties that there had been no recovery from the conscious possession of the petitioners. Apart from the above, it is not the case of the State that in case the petitioners are released on bail, then they may influence any witness or may tamper with evidence or may flee from justice nor anything has been so stated in the aforesaid short affidavit filed by the SSP, Moga.

15. Consequently, both the petitions are allowed. The petitioners 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.

16. 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 petitions only.

10.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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