

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42838-2023 (O&M)
Date of decision: 09.01.2024

JAGTAR SINGH @ JAGGA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.51 dated 17.03.2021, under Sections 379-B, 411 of the IPC; Sections 21, 29, 61, 85 of the NDPS Act and Sections 25, 27, 54, 59 of the Arms Act, registered at Police Station Division No.6, Ludhiana, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 2 years and 10 months and charges in the present case were framed by the learned trial Court on 17.07.2023 and till date only one prosecution witness has been examined, who was only a formal witness, namely, Harjinder Singh, who was a person deputed to deposit the sample before the FSL. He further submitted that not even a single prosecution witness who was a part of the police party has been examined till date for the reasons

best known to the State. He also submitted that the petitioner has been falsely implicated in the present case by alleging recovery of 60 grams of *Diphenoxylate Hydrochloride*, which is marginally higher than the commercial quantity under the NDPS Act only because of the reason that earlier he was involved in six more cases under the IPC and Arms Act. He further submitted that be that as it may, the trial of the case is not progressing and not even a single material witness has been examined till date and rather repeated warrants were issued to the prosecution witnesses but they have failed to depose before the learned trial Court for the reasons best known to them. He further submitted that the net result of the same is that the petitioner had to face incarceration for about 2 years and 10 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.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has filed the custody certificate of the petitioner in Court today and the same is taken on record. As per the custody certificate, the petitioner is in custody for 2 years, 9 months and 24 days. He submitted that only one prosecution witness has been examined till date as aforesaid, who was only a formal witness. He has however opposed the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender and also the quantity recovered was 60 grams of *Diphenoxylate Hydrochloride*, which although is marginally higher than the commercial quantity under the NDPS Act but still the bar contained under Section 37 of the NDPS Act will apply to the petitioner.

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

5. It is a case where the petitioner is in custody for 2 years, 9 months and 24 days and after the framing of charges by the learned trial Court on 17.07.2023, no material witness has been examined and only one witness, who is stated to be a person who had deposited the sample before the FSL has been examined. During the course of arguments, learned counsel for the petitioner submitted that the learned trial Court has repeatedly issued warrants against the prosecution witnesses but they have not deposed before the Court till date.

6. 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”.

7. 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.*

8. 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.”

9. 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.”

10. After hearing learned counsel for the parties and considering the aforesaid totality and circumstances of the present case especially the long

custody of the petitioner which is stated to be 2 years, 9 months and 24 days and the stage of the trial, this Court is of the 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 light of the aforesaid judgments of the Hon’ble Supreme Court.

11. 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.

12. 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.

09.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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