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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45707-2024
Date of decision: 18.09.2024

JORA SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

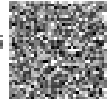
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. M. S. Hundal, Advocate for the petitioner.
(Through Video Conferencing)

Mr. Rajiv Verma, DAG, Punjab.

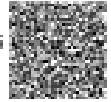
JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 483 of the BNSS, 2023 for the grant of regular bail to the petitioner in FIR No.141 dated 24.09.2020, under Sections 18/21/29/61/85 of the NDPS Act, registered at Police Station Khem Karan, District Tarn Taran, Punjab.
2. Learned counsel for the petitioner who has joined the proceedings through video conferencing submitted that the petitioner is in custody for 3 years, 11 months and 17 days, which is almost 4 years and charges in the present case were framed by the learned trial Court on 21.09.2021, which is about 3 years ago and only 7 prosecution witnesses have been examined out of total cited 19 prosecution witnesses. He further submitted that as per the story of the prosecution, a secret information was received by the police with regard to the presence of some *heroin* at the Indo-Pak Border and consequently, as per



the police they recovered 13.230 kgs. of *heroin* from the Indo-Pak Border. He further submitted that it was thereafter that the petitioner was arrested on 24.09.2020 and his statement was recorded in police custody and on the basis of the statement given by the petitioner, allegedly there was a recovery of 265 grams of *heroin* from him and due to the aforesaid reason, now he is in custody for about 4 years. He further submitted that the petitioner has been falsely implicated in the present case because earlier he was involved in two more cases under the NDPS Act, out of which he was convicted in one case under the NDPS Act and was sentenced to undergo imprisonment for a period of 10 years. He also submitted that considering the aforesaid long custody of the petitioner and the fact that about 3 years have elapsed after the framing of the charges, he may be considered for the grant of regular bail particularly in view of the judgments passed by Hon'ble Supreme Court in *Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]*, *Mohd. Muslim @ Hussain versus State (NCT of Delhi), 2023 AIR (SC) 1648*, *Dheeraj Kumar Shukla versus The State of Uttar Pradesh, 2023 SCC Online SC 918* and *Rabi Prakash versus The State of Odisha, Special Leave to Appeal (Criminal) No.4169 of 2023*.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab submitted on instructions from ASI Jagdish Singh that it is correct that the petitioner is in custody for 3 years, 11 months and 17 days and charges in the present case were framed by the learned trial Court on 21.09.2021, which is about 3 years ago and 7 prosecution witnesses have been examined out of total cited 19 prosecution witnesses. He further submitted that on the basis of secret information, the police recovered huge quantity of *heroin* i.e. 13.230 kgs. from the Indo-Pak



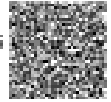
Border and thereafter, the petitioner was arrested and there was a recovery of 265 grams of *heroin* from him, which falls in the category of commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act will apply to the petitioner. He also submitted that the petitioner is a habitual offender and on that ground as well, he does not deserve the concession of regular bail.

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

5. The petitioner is in custody for 3 years, 11 months and 17 days, which is almost 4 years. Charges in the present case were framed by the learned trial Court on 21.09.2021, which is about 3 years ago and 7 prosecution witnesses have been examined out of total cited 19 prosecution witnesses. Although 13.230 kgs. of *heroin* was recovered from the Indo-Pak Border but so far as the present petitioner is concerned, the alleged recovery from him was 265 grams of *heroin*, which is marginally higher than the commercial quantity as defined under the NDPS Act. The mere fact that the petitioner is a habitual offender and was convicted in one case under the NDPS Act would not become a ground for denial of regular bail to the petitioner considering his long custody, which comes out to be about 4 years.

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

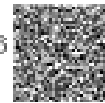


Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that 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 this issue with regard to 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. Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case (supra)**

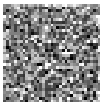
has observed as under:-

“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. 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, this Court is of the considered view that solely on the basis of long custody of the petitioner, which is almost 4 years and the fact that about 3 years have elapsed after the framing of the charges and only 7 prosecution witnesses have been examined out of total cited 19 prosecution witnesses, the petitioner deserves the concession of regular bail in light of Article 21 of the Constitution of India and also in light of aforesaid judgments of 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.

(JASGURPREET SINGH PURI)
JUDGE

18.09.2024
Chetan Thakur

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