

CRM-M- 51635-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 51635-2022 (O&M)
Date of Decision: 05.01.2024

Sushil Kumar alias Silla

... Petitioner

V/s.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Abhinav Gupta, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 106 dated 07.05.2021, under Sections 22-C, 29 of the NDPS Act and Section 61 of Punjab Excise Act, registered at Police Station Guhla, District Kaithal.
2. Learned counsel for the petitioner submitted that the present is a third petition filed for grant of regular bail by the petitioner. The earlier bail petition which was dismissed as withdrawn on 15.12.2021 vide Annexure P-7 and the second petition was dismissed on 14.03.2022 Annexure P-8 primarily on the ground that the same was filed after a gap of two months only and also on the ground of bar under Section 37 of the NDPS Act and now 10 months have elapsed. He submitted that the petitioner is in custody since 07.05.2021 i.e. more than 02 years and 06

months. He submits that allegations are pertaining to recovery of 1450 tablets of Tramadol Hydrochloride and 3000 tablets of Alprazolam and 40 bottles of country made liquor, which although falls under the category of commercial quantity but considering the stage of trial and the long incarceration of the petitioner, he may be considered for grant of regular bail. He further submitted that this is a case where the petitioner is having clean antecedents and is not involved in any other case whatsoever and has been falsely implicated in the present case. He submitted that the petitioner is in custody for more than 2 years and 06 months and only six out of total 18 prosecution witnesses have been examined till date. He submitted that primarily on the ground of long custody as aforesaid and also his clean antecedents, the petitioner may be considered for the grant of regular bail. He also referred to the judgments of the 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*, *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* in this regard.

3. On the other hand, Ms. Dimple Jain, learned DAG, Haryana has submitted that so far as the custody and antecedents of the petitioner are concerned, they are not in dispute but she has, however, opposed the grant of bail to the petitioner on the ground that since the quantity of contraband recovered from the petitioner falls under the category of commercial quantity and is hit by the bar contained under Section 37 of the NDPS Act, therefore, he is not entitled for grant of regular bail.

I have heard the learned counsel for the parties.

5. Although this is the third bail petition filed by the petitioner but his second petition was dismissed by this Court on 14.03.2022 Annexure P-8, which is almost 01 year and 10 months ago. However, as per learned counsel for the parties, the petitioner is stated to be not involved in any other case and has clean antecedents. Charges in the present case are stated to have been framed on 29.09.2021, which is also about 02 years and 03 months ago but only six prosecution witnesses have been examined so far with the result that total incarceration of the petitioner, who is otherwise having clean antecedents comes out to be more than two and a half years. During the course of arguments, a query was raised to the learned State counsel as to why the prosecution witnesses are not deposing before the Court despite the lapse of number of months, to which he could not offer any satisfactory reply.

6. The Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this issue of repeated adjournments and the scope of 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. The Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with the issue pertaining to delay in the trial vis-a-vis bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para No.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 Versus State of Odisha (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 the learned counsel for the parties, this Court is of the view that considering the clean antecedents, long incarceration of the petitioner and the stage of trial, not only the successive bail petition of the petitioner is maintainable but even the bar of Section 37 of the NDPS Act will not apply to the petitioner in the light of the aforesaid judgments of Hon'ble Supreme Court.

11. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety 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 merits of the case and is meant for the purpose of deciding the present petition only.

05.01.2024
Seema

(JASGURPREET SINGH PURI)
JUDGE

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