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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48052-2024(O&M)
Date of Decision: 30.09.2024

Sukhpal Singh @ Babbu

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Mikhail Kad, Advocate, for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.28 dated 06.03.2020, under Sections 22/25/29/61 of the NDPS Act and Sections 473, 411 of the IPC, registered at Police Station Dhanaula, District Barnala, Punjab.

2. Learned counsel for the petitioner submitted that in the present case, the petitioner is in custody for 3 years, 7 months and 26 days. He further submitted that the petitioner has been falsely implicated in the present case in view of the fact that earlier he was involved in two cases under the Excise Act and as per the prosecution, on the basis of secret information with regard to five persons including the petitioner, the police laid a naka and 125000 tablets of Clovidol-100 SR containing the salt of tramadol were recovered from the car which the petitioner was driving and



175000 tablets of Clovidol-100 SR were recovered from the other car, which the other co-accused, namely, Avtar Singh was driving and in this way, total 300000 tablets of Clovidol-100 SR were recovered by the police. He further submitted that the present case was planted upon the petitioner by the police because of pendency of two cases under the Excise Act against the petitioner and the fact that the petitioner has been falsely implicated in the present case is also substantiated from the fact that the prosecution witnesses, who are the police officials are abstaining themselves from deposing before the learned trial Court and it is because of the fault of the prosecution that the custody of the petitioner has been elongated to 3 years, 7 months and 26 days. He further submitted that although the custody of the petitioner after the date of arrest i.e. 06.03.2020 would be 4 years, 6 months and 23 days but since he has been convicted under the Excise Act, his actual custody in the present FIR comes out to be 3 years, 7 months and 26 days.

3. He further submitted that when the petitioner earlier filed a regular bail petition before this Court bearing CRM-M-45980-2023, the same was dismissed by this Court on 20.09.2023 in which considering the custody of the petitioner which is more than 3 years and 6 months, the learned trial Court was directed to expedite the trial and at that point of time, only 3 prosecution witnesses were examined and now only 7 prosecution witnesses have been examined out of total cited 22 prosecution witnesses and 3 prosecution witnesses have been given up and in this way, there had been no progress in the trial despite the fact that more than one year ago, this Court vide Annexure P-25 dated 20.09.2023 had directed the learned trial Court to expedite the trial. In this regard, learned counsel for the



petitioner also referred to Annexure P-3 to Annexure P-22 which are the zimni orders passed by the learned trial Court after the aforesaid direction was issued by this Court to expedite the trial. He further submitted that the aforesaid orders which have been attached alongwith the present petition starts from 13.10.2023 till 09.09.2024, wherein 19 adjournments have been granted by the learned trial Court and almost on every date warrants were issued to the police officials who are the prosecution witnesses especially Gurbachan Singh, SI and Karamjeet Singh, ASI. While referring to the aforesaid zimni orders, he submitted that initiallyailable warrants were issued against them for number of times but when they did not appear then warrants of arrest were issued against them but they flouted the orders of the learned trial Court and did not even appear despite the fact that warrants of arrest were issued against them and not once but for number of times and it was only thereafter, that some of the witnesses appeared and were examined but other witnesses are still being summoned through warrants of arrest but despite that they are not bothering to appear before the learned trial Court for deposing. He further submitted that till date only one material witness has been examined by the prosecution and six prosecution witnesses which have been examined by the prosecution are merely formal witnesses and in this way, it becomes very clear that the petitioner has been falsely implicated in the present case and that is the reason as to why the prosecution witnesses are not bothering to depose before the learned trial Court. He also referred to judgments of 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***

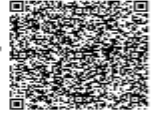


(SC) 1648], Dheeraj Kumar Shukla v. The State of Uttar Pradesh, 2023 SCC Online SC 918 and Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023 and has submitted that considering the long incarceration of the petitioner, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has submitted that it is correct that the total custody of the petitioner in the present FIR is 3 years, 7 months and 26 days, although his total custody is 4 years, 6 months and 23 days as he was convicted in one case under the Excise Act. He also submitted on instructions from SI-Gurjant Singh that out of total 22 cited witnesses only 7 witnesses have been examined and 3 have been given up. He further submitted that out of 7 witnesses which have been examined, only 1 witness is a material witness and remaining are the formal witnesses but the other material witnesses are not coming forth despite repeated warrants being issued to them as per the zimni orders which have been attached with the present petition as Annexures P-3 to P-22. He has however opposed the grant of bail to the petitioner on the ground that there has been a huge recovery from the petitioner which falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. As per the learned counsel for the parties, the actual custody of the petitioner comes out to be 3 years, 7 months and 26 days. As per the learned State counsel, there was a recovery of 125000 tablets of Clovidol-100 SR having the salt of tramadol from the car of the petitioner and



175000 tablets of Clovidol-100 SR were recovered from the car of the other co-accused, namely, Avtar Singh. There is no doubt that the alleged recovery in the present case is very large and therefore, this Court would consider the prayer of the petitioner in the light of Section 37 of the NDPS Act.

6. It has been argued by the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case because he was earlier involved in two other cases under the Excise Act and the aforesaid tablets have been planted upon the petitioner. Although the aforesaid argument is to be tested only at the time of trial after adducing of the evidence but only for the purpose of considering the grant of regular bail and considering the effect of Section 37 of the NDPS Act, it has to be seen in the light of various other factors as well. One of the important factors for considering the grant of bail would be the total custody of the petitioner which is stated to be 3 years, 7 months and 26 days. Another important factor would be the pace of trial. Vide Annexure P-25, the petitioner had earlier preferred a bail petition before this Court which was dismissed on 25.09.2023 which is more than one year ago, This Court after dismissing the bail petition of the petitioner had directed the trial Court to expedite the trial considering the custody of the petitioner which was more than 3 years and 6 months but at that point of time only three prosecution witnesses were examined and now only seven witnesses have been examined out of which as per learned counsel for the parties only one witness is the material witness and remaining are the formal witnesses. In this way, it is very clear that the trial of the case is not going on at a proper pace.



7. Learned counsel for the petitioner has laid much emphasis on the zimni orders passed by the learned trial Court after the aforesaid order dated 20.09.2023 (Annexure P-25) by which the bail petition of the petitioner was dismissed on 25.09.2023. After the aforesaid date, the matter was adjourned by the learned trial Court for about 19 times and a perusal of all the zimni orders would show that repeatedly not only the bailable warrants but non-bailable warrants and warrants of arrest were issued against the police officials who were supposed to depose before the trial Court and warrants of arrest were not issued once but were issued repeatedly and still the prosecution witnesses did not bother to depose before the learned trial Court and now only seven witnesses have been examined out of which as per learned counsel for the parties only one witness is the material witness and remaining are the formal witnesses.

8. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue.

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”.

9. Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain (Supra)*** has dealt with this issue. 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.

10. 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.”

11. 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.



12. After hearing the learned counsel for the parties, this Court is of the view that considering the aforesaid judgments of Hon'ble Supreme Court and considering the custody of the petitioner, stage of the trial and the conduct of the prosecution witnesses wherein they are abstaining from appearance despite repeated warrants of arrest etc. issued against them, 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.

13. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

14. 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, if not required in any other case.

15. 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.

30.09.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking

: Yes/No

Whether reportable

: Yes/No