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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54287-2023(O&M)

Date of Decision: 11.01.2024

Gagandeep Singh @ Gagan

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Veneet Sharma, 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 grant of regular bail to the petitioner in FIR No.188 dated 31.10.2021, under Sections 21(b), 25 and 29 of NDPS Act, registered at Police Station Special Task Force (STF). Mohali, District SAS Nagar, Mohali.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for more than 2 years and 2 months and as per the allegations, the petitioner alongwith other co-accused namely, Sahib Singh was coming on a motorcycle and police apprehended them and there was a recovery of 150 grams of heroin from the packet of other co-accused but there was no recovery from the present petitioner. He submitted that it is a case where the petitioner has been falsely implicated only on the ground that earlier he was involved in one case under the NDPS Act. He submitted that the custody of

the petitioner has been elongated only because of the fault of the prosecution and therefore, the bar of Section 37 of the NDPS Act will not apply to the present petitioner. To substantiate his arguments, he submitted that the charges in the present case were framed on 07.06.2022 which is more than 1½ years and not even a single prosecution witness has been examined till date. He also supplied photostat copies of the zimni orders passed by the learned trial Court after the framing of the charges and the same are hereby taken on record as Mark-X. While referring to the zimni orders, he submitted that for a number of times the prosecution witnesses were summoned and for three times evenailable warrants were issued against them and on one date the prosecution witnesses were even bound down but they did not care to depose before the Court and againailable warrants were issued against them. He submitted that these are the prosecution witnesses who had set the criminal law into motion and there is no reason or justification as to why they are not caring to depose before the Court and the result of the same is that the custody of the petitioner has been elongated to 2 years and 2 months for no fault of the petitioner. He 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 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*.

3. On the other hand, Mr. Rajiv Verma, learned DAG, Punjab has submitted that the petitioner is in custody for more 2 years and 2 months and charges were framed on 07.06.2022 but no prosecution witness has

been examined till date. He has however submitted that the petitioner is involved in one more case under the NDPS Act and the recovery from the co-accused in the present case was 150 grams of heroin and thereafter, on the arrest of the co-accused, there was recovery of 500 grams of heroin from the co-accused again and therefore, the total recovery in the present case 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 counsel for the parties.

5. It is a case where the petitioner has already faced incarceration for more than 2 years and 2 months and although there was no recovery from the petitioner and the recovery was from the other co-accused to the extent of 650 grams of heroin in total, the bar of Section 37 of the NDPS Act has to be considered in the facts and circumstances of the present case. It is the case of the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case on the ground that the prosecution witnesses have failed to depose before the Court for long period of time. A perusal of the zimni orders which have been supplied by the learned counsel for the petitioner would show that for a number of times the prosecution witnesses were summoned and even for about three times bailable warrants were issued against the prosecution witnesses but more than 1 ½ years have elapsed after the framing of the charges but no prosecution witness has been examined.

9. 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”.

7. 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.

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 judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioner and the stage of the trial whereby more than 1½ years have elapsed after the framing of the charges but no prosecution witness has been examined, 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 apart from the fact that the recovery in the present case was not from the petitioner but from the co-accused as per the learned counsel for the parties.

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

12. 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.

13. 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.

11.01.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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