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2024:PHHC:040993

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-51890-2023

Date of Decision: 21.03.2024

Lakhwinder Singh @ Lakha

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. A.S. Pannu, AAG, Punjab.

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 case bearing FIR No.106 dated 26.07.2022, under Section 15 of the NDPS Act, 1985, registered at Police Station City-I, Sangrur, District Sangrur.

2. It has been submitted by learned counsel for the petitioner that this is the third bail petition filed by the petitioner and the earlier two petitions were dismissed as withdrawn on 05.12.2022 and on 07.07.2023 vide Annexures P-3 & P-4, respectively. He further submitted that it is a case where the petitioner is in custody for 1 year and 7 months and in the present case, the charges were framed by the learned trial Court on 06.03.2023 which is more than one year ago, but till date not even a single witness has been examined. He has referred to the interlocutory orders which have been passed by the learned trial Court and photocopies of the same have been

produced before this Court which are taken on record and mark as 'X'. While referring to the aforesaid zimni orders, he submitted that more than one year has elapsed after the framing of charges and not even a single prosecution witness has been examined except one prosecution witness, who has been examined-in-chief and that too partly. He also submitted that the learned trial Court was constrained to issue bailable warrants against the prosecution witnesses for nine times and still they did not bother to depose before the Court.

3. Learned counsel for the petitioner further submitted that as per the allegations, the petitioner along with one other co-accused were coming from a car and there was a recovery of 70 kgs. of *Poppy Husk* from the seat of the car and as per the allegations, the other co-accused had run away but the petitioner was apprehended on the spot. He also submitted that in fact the present case was planted upon the petitioner and the petitioner is having clean antecedents and he is not involved in any other case and considering the aforesaid facts and circumstances, even if the aforesaid quantity is marginally higher than the commercial quantity under the NDPS Act, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the facts and circumstances of the present case and also in the light of the judgments of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)", 2023 AIR(SC) 1648, "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" 2023 SCC Online SC 918 and "Rabi Prakash Vs. The State of Odisha" in *Special Leave to Appeal (Criminal) No.4169 of 2023*.

4. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab stated

that it is correct that the petitioner has faced incarceration for 1 year and 7 months and it is also correct that he has clean antecedents and is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner was 70 kgs. of *Poppy Husk*, 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.

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

6. It is a case where the custody of the petitioner comes out to be 1 year and 7 months and as per both the learned counsels for the parties, the petitioner is having clean antecedents and is not involved in any other case. The alleged recovery from the car where the petitioner was travelling was 70 kgs. of *Poppy Husk* which is marginally higher than the commercial quantity under the NDPS Act. The charges in the present case were framed on 06.03.2023, and a perusal of the aforesaid interlocutory orders which have been passed by the learned trial Court after the framing of the charges, would show that about nine times the trial Court had issuedailable warrants against the prosecution witnesses, who are none other but the police officials, who had set the criminal law into motion. It appears that the delay in trial has been caused not because of the fault of the petitioner but at the fault of the prosecution. Till date, none of the prosecution witness has been examined except one prosecution witness, who has been examined-in-chief and that too partly.

7. During the course of arguments, a specific query was raised to learned AAG, Punjab as to what is the justification with regard to non-appearance despite number of times,ailable warrants were issued against

the prosecution witnesses to which he could not justify the same.

8. Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.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's case (supra)* also discussed the issue with regard to delay in trial and the long custody of the accused person *vis-a-vis* the bar contained Section 37 of the NDPS Act. The relevant Paras of the aforesaid judgment 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. Similarly, Hon’ble Supreme Court in ***Dheeraj Kumar Shukla’s case (supra)*** has opined 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. Thereafter, Hon’ble Supreme Court in ***Rabi Prakash’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“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.”

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12. After hearing the learned counsels for the parties and considering the objection raised by the learned State Counsel pertaining to Section 37 of the NDPS Act, this Court is of the considered view that in view of the aforesaid peculiar facts and circumstances, the petitioner has already faced incarceration for 1 year and 7 months and till date, not even a single prosecution witness has been examined and the petitioner has clean antecedents and is not involved in any other case, 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 view of the aforesaid judgments of the Hon’ble Supreme Court of India on the issue. Therefore, this Court deems it fit and proper to grant regular bail to the petitioner.

13. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

21.03.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No