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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56880-2023
Date of decision: 13.03.2024

RAVJEET KAUR @ RUBI

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Atul Lakhanpal, Senior Advocate with
Mr. Rajwant Singh Chahal, Advocate
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.201 dated 24.08.2022, under Sections 21/22/29/61/85 of the NDPS Act, registered at Police Station Dharamkot, District Moga, Punjab.
2. Learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner is a lady of the age of 26 years and she is having two minor children and in the present case, her name was nominated on the basis of disclosure statement of co-accused, namely, Jagjit Singh @ Ravi from whom there was an alleged recovery of 4 grams of *heroin* and 200 intoxicant tablets of *Etizola*. He further submitted that the present case was planted upon the petitioner because of political enmity and thereafter, the allegations against

the petitioner were that after her name was nominated on the basis of disclosure statement of aforesaid co-accused, there had been a recovery of 3 grams of *heroin* and 110 intoxicant tablets of *Etizola* from her, which although falls in the category of commercial quantity but since the present case was planted upon the petitioner and the fact that qua the petitioner, the charges were framed on 23.02.2023 and only one recovery witness has been examined and only 3 witnesses have been examined out of total cited 16 prosecution witnesses, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner considering the custody of the petitioner, which is more than 1 year and 6 months and the petitioner being a lady of the age of 26 years and having two minor children. He further submitted that apart from the above, the petitioner is not involved in any other case except for one case under Section 323 of the IPC and considering the peculiar facts and circumstances of the present case, she may be considered for the grant of regular bail. He has referred to a judgment of the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]** and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. He also referred to another judgment of Hon'ble Supreme Court in **"Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR (SC) 1648.** wherein the scope of Section 37 of the NDPS Act *vis-a-vis* Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that the petitioner is in custody for more than 1 year and 6 months

and the name of the petitioner had cropped up on the basis of disclosure statement of aforesaid co-accused, namely, Jagjit Singh @ Ravi but afterwards, there had been recovery of 110 intoxicant tablets of *Etizola* from the petitioner, which falls in the commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act will apply to the petitioner. He further submitted on instructions from ASI Jaswinder Singh that so far as the antecedents of the petitioner are concerned, she is not involved in any other case under the NDPS Act but she is involved in one more case under Section 323 of the IPC. He also submitted that only 3 prosecution witnesses have been examined till date although the charges qua the petitioner were framed by the learned trial Court on 23.02.2023.

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

5. It is a case where the petitioner is a lady of the age of 26 years having two minor children and she has already faced incarceration for more than 1 year and 6 months. Even otherwise also, the petitioner is stated to be having clean antecedents and not involved in any other case under the NDPS Act or under any other provision except for one case under Section 323 of the IPC. The name of the petitioner was nominated in the present case on the basis of disclosure statement of aforesaid co-accused. It is the case of the learned Senior Advocate appearing on behalf of the petitioner that so far as the recovery which was allegedly effected from the petitioner is concerned, the same was planted upon the petitioner. Till date only 3 prosecution witnesses have been examined despite the fact that more than 1 year has elapsed after the framing of the charges on 28.02.2023.

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 regarding 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. After hearing learned counsel for the parties, this Court is of the view that considering the aforesaid totality and circumstances of the present case i.e., the fact that the petitioner is a lady of the age of 26 years having two minor children, the name of the petitioner was nominated on the basis of disclosure statement of aforesaid co-accused, the custody of the petitioner and the stage of the trial, 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 the light of the aforesaid judgments of the Hon’ble Supreme Court.

9. 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.

10. 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.

13.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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