

CRM-M- 57272-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 57272-2023 (O&M)
Date of Decision: 05.01.2024

Ajay Singh

... Petitioner

V/s.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Rajiv Verma, D. A. G., Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 100 dated 11.05.2022, under Section 22 (c) of the NDPS Act, registered at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

2. Learned counsel for the petitioner has submitted that it is a case where the petitioner has faced incarceration for more than 1 year and 07 months and the allegations against the petitioner are with regard to confiscation of 12000 tablets of Tramadol Hydrochloride, which he was allegedly carrying in a plastic bag and the police party had detected and recovered the same from him. He submitted that the petitioner is having clean antecedents and is not involved in any other case and due to personal enmity, the present case was planted upon the petitioner by the police. He further submitted that the

aforesaid submission can be substantiated from the fact that the Court framed charges on 07.01.2023 and thereafter almost one year has elapsed that the Court has adjourned the case for about 14 times by repeatedly issuing summons to the police officials who are also the prosecution witnesses and who had put the criminal law into motion. He submitted that they not only evaded the process of the Court but also failed to depose before the Court despite the fact that they are the persons who had put the criminal law into motion. It is the duty of the police officials who are also prosecution witnesses in the present case to depose before the Court but they have failed to do so for about 01 year even after the framing of the charges. He submitted that the net result of the same is that the petitioner had to face incarceration for more than 01 year and 07 months for no fault of the petitioner. He also referred to the *zimni* orders passed by the Court of Additional Sessions Judge, Sri Muktsar Sahib vide Annexure P-4 in this regard. Learned counsel has relied upon the judgment 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] and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* in this regard.

3. On the other hand, Mr. Rajiv Verma, learned D. A. G., Punjab has submitted that it is correct that the petitioner is in custody for more than 01 year and 07 months and it is also correct that the petitioner is not involved in any other case whatsoever. He has, however, submitted that there has been a recovery of 12,000 tablets of Tramadol Hydrochloride which is a huge quantity and also commercial in nature as per the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 and therefore the bail petition of the petitioner is hit by the bar contained under Section 37 of the Narcotic Drugs

and Psychotropic Substances Act, 1985.

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

5. The present is the case where the petitioner has already faced incarceration for more than 01 year and 07 months and he is stated to be having clean antecedents and is not involved in any other case even as per the learned counsel for the respondent-State. A perusal of the *zimni* orders which have been attached by the petitioner would show that the charges were framed on 07.01.2023 and thereafter as many as 14 adjournments have been granted by the learned trial Court and repeatedly summons were issued to the police officials, who are the prosecution witnesses but they were not served. Once the police officials who are also the prosecution witnesses have set the criminal law into motion and have arrested an accused person then it is the duty of those prosecution witnesses to depose before the Court in time so that there is no long incarceration because of the fault of the non-appearance of the prosecution witnesses. The mere fact that they were not served will not be a ground for denial of bail to the accused when the custody is being perpetuated only because of this reason. Speedy trial is also part of the fundamental rights which is a settled law.

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 ***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.

9. After hearing learned counsel for the parties and considering the factual position of the present case, this Court is of the considered view that the bar of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985

will not apply to the present petition in light of Article 21 of the Constitution of India and also in light of the aforesaid judgments of Hon’ble Supreme Court. Particularly, in view of the fact that the custody of the petitioner is more than 01 year and 07 months and he is having clean antecedents and also the fact that till date not even a single prosecution witness has been examined despite the fact that the charges were framed about 01 year ago.

10. 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.

11. 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