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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-57408-2023
Date of Decision: 21.03.2024

Vikramjeet Singh @ Bikkar Petitioner
Versus
State of Punjab Respondent

CRM-M-3474-2024

Harpreet Singh @ Happy Petitioner
Versus
State of Punjab Respondent

CRM-M-9203-2024

Vicky Singh Petitioner
Versus
State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harmanpreet S. Mander, Advocate for
Mr. Harpreet Singh Multani, Advocate,
for the petitioner in CRM-M-57408-2023.

Mr. Vivek Singla Advocate
for the petitioner in CRM-M-3474-2024.

Mr. J.K. Singla Advocate
for the petitioner in CRM-M-9203-2024.

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

JASGURPREET SINGH PURI, J. (ORAL)

1. These petitions have been filed under Section 439 of the Code
of Criminal Procedure for grant of regular bail to the petitioners and are
being taken up together for final disposal with the consent of the learned

counsels for the petitioners, since they arise out of the same FIR bearing No.25 dated 13.03.2021, under Sections 22, 25 of the NDPS Act (Section 29, 61 and 85 of the NDPS Act added later on), registered at Police Station Dhanaula, District Barnala.

2. Status report by way of affidavit of Superintendent District Jail, Barnala has been filed in CRM-M-57408-2023 by the learned State Counsel in Court today and the same is taken on record.

3. The FIR was lodged on the basis of the information received by the police that two persons, namely, Vikramjeet Singh @ Bikkar (Petitioner in CRM-M-57408-2023) and Harpreet Singh @ Happy (Petitioner in CRM-M-3474-2024) being in connivance with each other bring narcotic tablets from outer States and distribute in Districts Sangrur and Barnala at a large scale and the number of the car was also mentioned in the FIR i.e. PB-09-Z-8911 colour white make Swift and they had also changed the number of the car to DL-09A-AL-4312. Thereafter, a naka was laid down by the police on receiving information and registering of the FIR. Two petitioners, namely, Vikramjeet Singh @ Bikkar and Harpreet Singh @ Happy were caught on the spot and allegedly there was a recovery of 10000 tablets of *Tramadol Hydrochloride* and two fake number plates of the car from them. During the investigation, they disclosed the name of other co-accused, namely, Vicky Singh (Petitioner in CRM-M-9203-2024), from whom, there was a recovery of 40,000 tablets along with drug money of Rs.1,50,000/- and thereafter, on his disclosure statement, another alleged recovery of 8000 tablets were recovered and in this way total 48,000 tablets were recovered from the petitioner-Vicky Singh. On the basis of the disclosure statement of the

petitioner-Vicky Singh, one another co-accused, namely, Rinku Singh was also nominated and on whose disclosure statement also, there was a recovery of 1350 tablets. Thereafter, the aforesaid co-accused, namely, Rinku Singh disclosed the name of Raju Singh.

4. It has been submitted by Mr. Harmanpreet S. Mander, learned counsel appearing on behalf of the petitioner-Vikramjeet Singh @ Bikkar in CRM-M-57408-2023 that this is the third bail petition filed by the petitioner and he is in custody for more than 3 years and earlier also he had filed two bail petitions before this Court for grant of regular bail out of which one was dismissed on 25.04.2022 and second was withdrawn on 21.03.2023, but now considering the aforesaid long custody of the petitioner, he may be considered for grant of regular bail. He further submitted that the petitioner-Vikramjeet Singh @ Bikkar is not involved in any other case under the NDPS Act. He submitted that although he was involved in two more cases under the IPC but he has since been acquitted in both cases and as such there is no other case against him.

5. Mr. Vivek Singla, learned counsel appearing on behalf of the petitioner-Harpreet Singh @ Happy in CRM-M-3474-2024 submitted that this is the third bail petition filed by the petitioner and is also in custody for more than 3 years and earlier he had filed two petitions before this Court for grant of regular bail out of which one was dismissed on 25.07.2022 and second was withdrawn on 21.09.2023. He further submitted that the petitioner was involved in one more case under the NDPS Act in which he was convicted for one month because it was a small quantity and there is one case under the Prisons Act against him. He submitted that considering his

custody, he may also be considered for grant of regular bail.

6. Mr. J.K. Singla, learned counsel appearing on behalf of the petitioner-Vicky Singh in CRM-M-9203-2024 submitted that this is the fourth bail petition filed by the petitioner and the earlier three petitions were dismissed as withdrawn. He further submitted that the petitioner is in custody for 1 year and 1 month because after adjusting the custody in other case, his total custody in the present case comes out to be 1 year and 1 month, although in the present case, he is behind the bars for the same period as that of the aforesaid two co-accused. He further submitted that so far as the antecedents of the present petitioner is concerned, he was earlier involved in five more cases, out of which, there are two convictions and two cases are pending trial. He further submitted that the name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused and there is no other material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused, which is otherwise not admissible in evidence. He has referred to a judgment passed by Hon'ble Supreme Court in “**Tofan Singh Vs. State of Tamil Nadu**”, 2021(4) SCC 1, to contend that the disclosure statement of the co-accused *per se* is not permissible in law and still he has faced long incarceration and therefore, he may also be considered for grant of regular bail.

7. All the learned counsels appearing on behalf of the petitioners have argued together that even otherwise also although the alleged recovery is stated to be large and falls in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act would not apply in the

present cases considering the facts and circumstances and also considering the custody of the petitioners. To substantiate their arguments, they referred to the interlocutory orders which have been passed by the learned trial Court after the framing of the charges on 16.09.2021 and photocopies of the same have been produced before this Court which are taken on record and mark as 'X'. They submitted that 2½ years have elapsed after the framing of the charges and till date only 8 out of 30 cited prosecution witnesses have been examined and while referring to the aforesaid order, they submitted that the prosecution witnesses, who are none other but the police officials, who had set the criminal law into motion, have not bothered and cared to depose before the Court despite strict orders and summons being issued to them. While referring to the aforesaid interlocutory orders, they submitted that for 11 times,ailable warrants were issued to the prosecution witnesses and once even non-ailable warrants were also issued. For about five times, the learned trial Court had directed that the prosecution witnesses be served through the concerned SSP and for five times, even warrants of arrest were issued which remained unexecuted. They further submitted that the trial Court had been repeatedly issuing theailable and non-ailable warrants and surprisingly even the warrants of arrest remained unexecuted against none other but the police officials who are on duty and they did not bother to appear before the Court for deposing. They also submitted that in fact it is a case where the police in order to justify some tablets have planted the case upon the petitioners and that is a reason, as to why they are not deposing before the Court despite repeated summons,ailable and non-ailable warrants being issued against them. The learned counsels also submitted that

be that as it may, even otherwise also, the custody of the petitioner is more than three years and considering the judgments passed by 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*, the petitioners are entitled for grant of regular bail in the light of Article 21 of the Constitution of India.

8. On the other hand, Mr. A.S. Pannu, learned Assistant Advocate General, Punjab submitted that so far as the aforesaid custody of all the petitioners is concerned, the same is correct and the list of other cases against the petitioners which is so stated by the learned counsels for the petitioners is also correct. He further submitted that the charges in the present case were framed on 16.09.2021, which is almost 2½ years ago and 8 out of 30 witnesses have been examined till today. He has however opposed the grant of regular bail to the petitioners on the ground that there is a huge recovery which were initially from the petitioners, namely, Vikramjeet Singh @ Bikkar and Harpreet Singh @ Happy to the extent of 10000 tablets of *Tramadol Hydrochloride* and thereafter, 48000 tablets of *Tramadol Hydrochloride* and considering the huge recovery, the petitioners are not entitled for grant of regular bail. He also submitted that so far as one of the petitioners, namely, Vicky Singh, is concerned, he is a habitual offender as aforesaid.

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

10. The custody of all the three petitioners is more than three years. However, the custody of the petitioner, namely, Vicky Singh is shown to be 1 year and 1 month because he is involved in other cases as well and after adjusting the same, the aforesaid custody period has come to light. The petitioner, namely, Vikramjeet Singh @ Bikkar is stated to be not involved in any other case. The petitioner-Harpreet Singh @ Happy is stated to be involved in one case under the NDPS Act in which he was convicted earlier in the year 2013 for a period of one month. Both the aforesaid petitioners were apprehended on the spot. So far as the third petitioner, namely, Vicky Singh is concerned, he was not apprehended on the spot but he was nominated on the basis of the disclosure statement of the aforesaid petitioners and thereafter, there was an alleged recovery from him as well.

11. The charges in the present case were framed on 16.09.2021 and a perusal of the orders which have been supplied by the learned counsels for the petitioners in the Court today would show that repeatedly bailable and non-bailable warrants were issued against the prosecution witnesses and in total for about 11 times, the bailable warrants were issued, for one time non-bailable warrants were issued. For five times, the prosecution witnesses who are the police officials were directed to be served through concerned SSP and thereafter, even for five times, warrants of arrest were issued some of which remained unexecuted and prosecution witnesses did not appear before the learned trial Court for deposition. It appears that with great efforts of the learned trial Court, 8 prosecution witnesses had caused appearance and had deposed.

12. 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.”

13. 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.”

14. 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.”

15. 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.”

16. During the course of arguments, this Court raised a specific

query to the learned AAG, Punjab that as to what is the justification with regard to non-appearance of the prosecution witnesses and the trial Court had to issue bailable and non-bailable warrants against them to which he could not offer any justification. The only ground of opposing the bail to the petitioners is that the bar contained under Section 37 of the NDPS Act applies in the present cases.

17. Considering the aforesaid facts and circumstances, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioners 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 and their custody which is more than three years. Therefore, this Court deems it fit and proper to grant regular bail to all the petitioners.

18. Consequently, all the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

19. 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

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

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