

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203 (2 cases) CRM-M-59819-2023(O&M)
Date of Decision:09.04.2024

1.

Khalara Singh @ Munna @ Khari@ KhlaraPetitioner
Versus

State of PunjabRespondent

CRM-M-60721-2023(O&M)
Date of Decision:09.04.2024

2.

Sukhdev Singh @ Babbi BhaleriaPetitioner
Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Karandeep Singh Sidhu, Advocate for the petitioners.
Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

CRM-11039-2024 in CRM-M-59819-2023

Present application has been filed for placing on record copy
of judgments as Annexures P-7 to P-12.

Application is allowed as prayed for subject to all just
exceptions.

The accompanying documents are taken on record as
Annexures P-7 to P-12.

Main cases

1. Both the present petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out of the same FIR and the prayer in both the cases is for the grant of regular bail.

2. Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.09 dated 21.01.2023, under Sections 21 of NDPS Act and Section 25 of Arms Act, 1959, registered at Police Station Mamdot, District Ferozepur.

3. The brief facts of the present case are that the present FIR was registered against 09 named and 10 unnamed persons on the basis of secret information received by the police that there will be delivery of contraband and arms across the border and in pursuance of the same there was a recovery of 02 kgs of heroin, one pistol and two magazines and 12 live cartridges from the fields of one Kulwant Singh who is not named in the FIR nor he is an accused in the present petition. The present petitioners have been named in the FIR alongwith 07 other persons. Three of the other accused persons who have been named in the present FIR i.e. Amrjeet Singh, Mangal Singh and Arshdeep Singh were exonerated by the police during the course of investigation. However, so far as Amarjeet Singh, is concerned, later on challan was presented against him and he filed bail petition bearing No.CRM-M-50114-2023 before this Court which was allowed on 16.11.2023 vide Annexure P-5. On the basis of secret information, the present FIR was registered but as per the prosecution itself, there was no recovery from the petitioners.

4. CRM-M-60721-2023 has been filed by petitioner namely Sukhdev Singh @ Babbi Bhaleria and CRM-M-59819-2023 has been filed by petitioner Khalara Singh @ Munna @ Khari@ Khlara and Mr. K.S. Sidhu, Advocate for the petitioners has appeared on behalf of both the petitioners.

5. Learned counsel for the petitioners submitted that the petitioner Khalara Singh @ Munna @ Khari @ Khlara is in custody for about 11 months and 02 days and petitioner Sukhdev Singh is in custody for about 01 year and 01 month. He further submitted that it is a case where the petitioners were falsely implicated in the present FIR only because of the reason that earlier they were involved in some other cases and submitted that so far as petitioner Khalara Singh is concerned he was earlier involved in 14 more cases including 01 case under the NDPS Act but he already stands acquitted in 09 cases and remaining cases are pending against him and he is already on bail in 06 cases. So far as the petitioner Sukhdev Singh is concerned, he is involved in 04 more criminal cases out of which 03 are pertaining to NDPS Act and he is on bail in all the cases since the quantity involved in the aforesaid cases was non-commercial. Learned counsel further submitted that the cross border contraband smuggling nowadays is a routine practice and the police is not able to lay its hands on the actual culprits and some of the local inhabitants around the village are being falsely implicated so as to justify their actions that some action had been taken in the aforesaid confiscation. He further submitted that it is a case where the aforesaid heroin and arms were recovered from the fields of one Kulwant Singh whereas the aforesaid Kulwant Singh has not been arraigned as an accused and

because of the pendency of some cases against the petitioners they have been named and there had been no recovery at all from the present petitioners. He further submitted that respondent-State has filed status report in both the cases from which nothing can be ascertained or even seen as to how the petitioners were connected with the present offence. He further submitted that when the challan was presented which has been attached with the present petition during the investigation nothing has been found to have any connection with the aforesaid confiscation and in view of the aforesaid facts and circumstances and because of the false implication, the petitioners are entitled for the grant of regular bail.

6. The learned counsel for the petitioners further submitted that in order to substantiate his submission with regard to false implication which can be seen that in the present case the trial Court framed the charges on 25.05.2023 which is almost 10 months ago and till date not even a single witness has been examined. Learned counsel also supplied to this Court photocopy of the interlocutory orders passed by the Trial Court after framing of the charges and the same are taken on record as Mark 'X'. While referring to the aforesaid orders, he submitted that on 18.10.2023 the learned trial Court had observed that no prosecution witness was present and PW Inspector Lekh Raj who is the investigating officer of the present FIR has not appeared despite service and he was summoned through non-bailable warrants and the remaining witnesses at Sr. No.2 and 3 were also summoned. Thereafter on 11.01.2024 again no PW was present and the aforesaid PW IO Lekh Raj was again summoned through non-bailable warrants and the remaining witnesses at Sr. No.2 and 3 were also summoned. Thereafter on 01.02.2024, again no PW was

present and Inspector Lekh Raj was again summoned through non-bailable warrants and the aforesaid witnesses at Sr. No.2 and 3 were again summoned. Thereafter, when the matter came up for hearing on 12.03.2024 again no PW was present and witnesses at Sr. Nos.2 and 3 were again summoned. He further submitted that in this way the investigating officer has been summoned thrice by way of non-bailable warrants but he did not bother to appear before the learned Trial Court to depose and likewise on each and every date none of the prosecution witnesses were present despite being summoned repeatedly. He further submitted that more than 10 months have elapsed after framing of the charges and despite issuance of non-bailable warrants not even a single prosecution witness has been examined till date which goes to show that the petitioners were falsely implicated and that is the reason as to why the prosecution witnesses are not appearing before the learned Trial Court.

7. Learned counsel for the petitioners 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 affected. 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. He further referred to a judgment of Hon'ble Supreme Court in ***"Dheeraj Kumar Shukla versus The State of Uttar Pradesh"***,

2023 SCC Online SC 918 and also a judgment of Hon'ble Supreme Court in "***Rabi Prakash versus The State of Odisha***", ***Special Leave to Appeal (Criminal) No.4169 of 2023*** to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

8. He, however, submitted that neither any recovery was effected from the petitioners nor it is the case of the prosecution that anything was recovered from the petitioners. He further submitted that in the light of aforesaid facts and circumstances of the case, even if recovery was made from fields of one other person Kulwant Singh, who is not arraigned as an accused in the present case, bar under Section 37 of NDPS Act will not apply to the petitioners and therefore, they may be considered for grant of regular bail. He also submitted that the FIR and the challan are presented under Section 21 of NDPS Act and Section 25 of Arms Act but there is no invocation of Section 29 of NDPS Act in the present case.

9. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab on instructions from ASI Jaspal Singh, submitted that so far as the custody of the petitioners as so stated by learned counsel for the petitioners is concerned, the same is correct. It is also correct that charges were framed on 25.05.2023 and more than 10 months have elapsed but no prosecution witness has been examined till date. He further submitted that one of the co-accused namely Amarjeet Singh who was earlier exonerated by the police but later on challan was presented qua him as well and he has already been extended the benefit of regular bail by this Court. He has, however, submitted that the present petitioners are not at parity with the

aforesaid co-accused namely Amarjeet Singh because the aforesaid Amarjeet Singh is not involved in any other criminal case. He further submitted that in the present case although there was no recovery from the petitioners but on the basis of secret information, the petitioners were named in the FIR and it was on the basis of the aforesaid secret information that they were arraigned as an accused and the challan has been presented qua them in the competent Court and, therefore, considering the criminal antecedents of the petitioners, they are not entitled for the grant of regular bail.

10. I have heard learned counsel for the parties.

11. It is a case where the petitioner namely Khalaria Singh @ Munna @ Khari@ Khlara is in custody for about 11 months and 02 days and petitioner Sukhdev Singh is in custody for about 01 year and 01 month. Both of the petitioners are stated to be having criminal antecedents. However, this Court will have to consider the facts and circumstances of the present case in the light of submissions made by learned counsel for the petitioners. The allegations in the present case qua the petitioners were that they have been arraigned as accused in the present FIR on the basis of the secret information that they were instrumental in getting the heroin and arms from across the border. The recovery of the aforesaid contraband and arms was made from the fields of one Kulwant Singh who is not arraigned in the present FIR. No recovery has been made from the present petitioners. A perusal of the status report filed by the State, challan and the submissions made by learned counsel for the respondent-State would show that nothing could be seen or ascertained as to how the petitioners were connected with the

present recovery i.e. the aforesaid arms and contraband. A query was raised by this Court to learned State counsel as to whether any material has been found from the petitioners despite secret information being received to which he submitted that during investigation the mobile phone etc. of the petitioners were seized and sent to the Forensic Laboratory for further analysis in the month of February 2023 but no report has been received till date and as of today except for the secret information, there is nothing to connect the petitioners with the offence even as per the status report filed by the respondent-State.

12. Charges in the present case were framed on 25.05.2023 which is almost 10 months ago and a perusal of the interlocutory orders passed by the learned Trial Court so supplied by learned counsel for the petitioners as Mark 'X' would show that despite non-bailable warrants being issued three times, IO namely Lekh Raj, did not bother to appear before the learned Trial Court for deposition. Similarly two more witnesses were summoned repeatedly and they also did not bother to appear before the Trial Court. As a result, the trial got delayed and because of non-deposition of the prosecution witnesses for the reasons best known to them, the Trial Court was constrained to repeatedly pass the orders for summoning and also for issuance of non-bailable warrants.

13. The 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 fkk or 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”.

14. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (*supra*) has dealt with the 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.

15. 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.”

16. The Hon'ble Supreme Court in ***Rabi Prakash's case (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.”

17. In the present case there has been no recovery of any contraband and arms from the present petitioners and they have been arraigned on the basis of secret information only and even the report of the forensic laboratory has not been received till date. During the course of arguments, this Court had asked a specific query to learned State counsel as to what was the justification and why the prosecution witnesses, especially IO of the present case is not appearing before the Trial Court for deposition non-bailable warrants being issued against him thrice, to which after taking instructions from the official namely ASI Jaspal Singh, who is present in Court he was not able to justify the same. The plea taken by learned counsel for the petitioners with regard to false implication therefore, cannot be ignored. Although this court does not wish to make any observation on merits with regard to the aforesaid plea and it is only for the purpose of considering the bail petition that the aforesaid plea cannot be ignored .

18. Therefore, this Court is of the view that considering the aforesaid totality of facts and circumstances of the present case, 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 the light of aforesaid judgments of Hon’ble Supreme Court.

19. Consequently, the present petition is allowed. The petitioners 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.

20. 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.

(JASGURPREET SINGH PURI)
JUDGE

09.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No