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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-60539-2023

Date of Decision: 06.03.2024

Major Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. D.S. Virk, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

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 case bearing FIR No.299 dated 02.12.2021, under Section 22(c) of the NDPS Act, 1985, registered at Police Station Guhla, District Kaithal.

2. It has been submitted by learned counsel for the petitioner that this is the second bail petition filed by the petitioner and the earlier one was dismissed as withdrawn on 06.07.2023 vide Annexure P-14. He further submitted that it is a case where the petitioner is in custody for 2 years 3 months and 2 days and the allegations against him were that the police on seeking an information had come to the house of the petitioner where allegedly they saw the petitioner with a polythene bag and from the bag there was an alleged recovery of 1905 tablets of *Etizolam Altoprax* which although falls in the category of commercial quantity but in the facts and

circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. He submitted that not only the long custody but even otherwise also it is a case where the petitioner has been falsely implicated by the police. He also submitted that one Harpreet Singh is residing in the neighbourhood of the petitioner and the aforesaid Harpreet Singh is having a criminal background and is facing a number of cases regarding which the petitioner has mentioned a list in Para 4 of the petition and most of the cases are pertaining to the NDPS Act. He submitted that due to enmity in the neighbourhood, it was at the instance of the aforesaid Harpreet Singh that the aforesaid FIR was lodged against the petitioner in which he was falsely implicated. He further submitted that as per the allegations the police party had reached the house of the petitioner where they apprehended him and made recovery of the aforesaid quantity and thereafter, a notice under Section 50 of the NDPS Act was served to the petitioner and thereafter, one Tehsildar was called on the spot. He further submitted that the aforesaid Tehsildar had allegedly come on the spot in a car which was otherwise in a decayed condition and was in the police station for large numbers of years. He also submitted that the petitioner and his mother moved numerous representations and complaints to the police that the petitioner has been falsely implicated at the instance of the aforesaid Harpreet Singh in connivance with the police but no action was taken in this regard. He submitted that the trial has not even commenced in a fast pace and the charges in the present case were framed on 18.07.2022 which is almost 1½ years ago and till date only three prosecution witnesses have been examined and those witnesses were, namely, HC Pawan Kumar, Govind and Rajesh. He further submitted that the aforesaid three prosecution witnesses,

who have been examined, were not even the material witnesses and they were only formal witnesses. He also submitted that one of the prosecution witnesses was only the Incharge of the *Malkhana* and another was a person, who was deputed to send the sample to the Forensic Laboratory whereas none of the persons who were in the police party or any of the recovery witnesses have been examined. He submitted that neither the Investigating Officer nor the aforesaid Tehsildar, who is stated to be a Gazetted Officer who was called to the spot, has been examined for the reasons best known to the prosecution. He further submitted that after the framing of the charges more than 1½ years have elapsed and there is no justification for the prosecution to have not examined the material witnesses especially when the case of the petitioner is that he has been falsely implicated and it is only when they are to be examined, only then they can be cross-examined and the truth can be unveiled.

3. Learned counsel for the petitioner further submitted that the petitioner is having clean antecedents and is not involved in any other case and it is only in the present case that the petitioner has been falsely implicated at the instance of the aforesaid Harpreet Singh in connivance with the police official because the petitioner had a neighbourhood dispute with the aforesaid Harepreet Singh, who is facing a large number of cases pertaining to the NDPS Act.

4. Learned counsel for the petitioner has referred to 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* and also referred to the latest judgment of the Hon’ble Supreme Court passed in *Special Leave to Appeal (Criminal) No.8188 of 2023* “*Manish Sisodia Vs. Central Bureau of Investigation*” decided on 30.10.2023, to contend that in view of the aforesaid factual position as well as the judgments passed by the Hon’ble Supreme Court when there is a long delay in the trial especially when the delay is not due to the fault of the accused in such situations even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

5. On the other hand, Mr. Kapil Bansal, learned DAG, Haryana stated that it is correct that the petitioner has faced incarceration for more than 2 years 3 months and 2 days and it is also correct that after the framing of the charges i.e. on 18.07.2022, according to his instructions, five witnesses have been examined. So far as the antecedents of the petitioner are concerned, he submitted that the petitioner 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 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.

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

7. It is a case where the custody of the petitioner comes out to be 2 years 3 months and 2 days and as per both the learned counsels for the parties, the petitioner is having clean antecedents and is not involved in any other case whatsoever. On the other hand, it is a case of the learned counsel for the petitioner that the petitioner has been falsely implicated in the present

case in view of the reason that in his neighbourhood there is one Harpreet Singh, against whom, there are a large number of cases under the NDPS Act and it was because of enmity with the aforesaid Harpreet Singh that the police in connivance with him had falsely implicated the petitioner. Whether the petitioner was falsely implicated or not, can only be considered at the time of trial by way of adducing the evidence. However, as per the learned counsel for the petitioner, after the framing of the charges on 18.07.2022, only three witnesses have been examined and those witnesses were not even a part of the police party nor were they recovery witnesses etc. Neither the Investigating Officer has been examined nor the Gazetted Officer, who was called to the spot, has been examined till date despite the fact that more than 1½ years have elapsed after the framing of the charges. It appears that the prosecution witnesses, who are either the police officials or the Gazetted Officer, have been evading the process and they are not deposing before the Court.

8. The 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. The 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, the 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, the 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.”

12. Recently, the Hon’ble Supreme Court in ***Manish Sisodia’s case (Supra)*** has dealt with the issue of prolonged incarceration. The relevant portion of the judgment is reproduced as below:

“28. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances

Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, Criminal Appeal a/o. of SLP (Crl.) No. 8167 of 2023 & Anr. Page 40 of 41 mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

13. 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 2 years 3 months and 2 days and even till date, the material witness has not 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.

14. 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.

15. 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.

06.03.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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