

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

**CRM-M-15396-2024 (O&M)
Date of Decision:25.02.2025**

Jagjit Singh @ Ravi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Yugank Goyal, Advocate and
Mr. Ankit Tayal, Advocate for the petitioner.

Mr. P.S. Bhandari, AAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

CRM-45177-2024

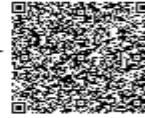
Present application has been filed for placing on record certain documents.

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

The accompanying documents are taken on record as Annexures P-8 to P-10.

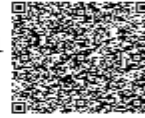
Main case

1. The present is a successive petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.201 dated 24.08.2022 under Sections 21 and 22 of NDPS Act (Section 29 of NDPS Act added later on) registered at Police Station Dharamkot, District Moga.



2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has been in custody for 2 years, 05 months and 28 days and charges were framed on 23.02.2023 which is more than two years ago and only 04 out of 16 cited prosecution witnesses have been examined. He submitted that it is a case where the allegations against the petitioner are that the police party saw the petitioner carrying a black colour polythene bag and upon seeing the petitioner, he threw away the polythene bag on the ground. Thereafter, another police party arrived, and there was a recovery of 4 grams of *heroin* and 200 intoxicant tablets of *Etizolam*, which were shown to have been recovered from the ground in a polythene bag and not from the person of the present petitioner. He submitted that out of the 4 prosecution witnesses who have been examined only 01 material witness has been examined, who is ASI Kuldeep, while the other 3 witnesses were not material witnesses but formal witnesses. As per the allegations, there were various police personnel who constituted part of the police party, but they have not been examined. More than 2 years have elapsed since the framing of charges and the trial of the case is progressing at a very slow pace. The total custody of the petitioner has come out to be about two and a half years and therefore, the petitioner may be considered for grant of regular bail. He further submitted that the petitioner is falsely implicated in the present case, considering the fact that he was previously involved in two other cases, one pertaining to the NDPS Act and the other under Section 308 of the IPC.

3. Learned counsel for the petitioner has referred to a judgment of Hon'ble Supreme Court in *Satender Kumar Antil versus Central Bureau*

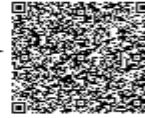


of Investigation and another, [2022 (10) SCC 51] and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are affected. He also referred to another judgment of 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.

4. On the other hand, learned State counsel submitted that, as far as the custody of the petitioner, as stated by learned counsel for the petitioner, is concerned, the same is correct. It is also correct that charges were framed on 23.02.2023, which is more than two years ago, but only 4 out of 16 cited prosecution witnesses have been examined. He, however, opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in two more cases, as aforesaid, and that the recovery from the petitioner included 200 tablets of *Etizolam*, which falls under the category of commercial quantity. Therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

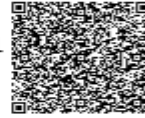
6. The custody of the petitioner has come out to be two and half years and charges in the present case were framed on 23.02.2023, which is more than two years ago. Only 4 out of 16 cited prosecution witnesses have been examined. According to learned counsel for the parties, only 01 material witness has been examined and remaining 03 are formal witnesses.



7. After hearing learned counsels for the parties and considering the stage of the trial and custody of the petitioner, this Court is of the considered view that, after two years of the framing of charges, the prosecution has been able to examine only 04 witnesses, out of which only 01 is a material witness and the remaining 03 are formal witnesses. No explanation has been provided by learned State counsel as to why there has been a delay in examining the prosecution witnesses. Learned counsel for the petitioner has referred to a judgment of Hon'ble Supreme Court in ***Satender Kumar Antil's case (supra)***, whereas, on the other hand, learned State counsel has referred to Section 37 of the NDPS Act, submitting that the quantity recovered from the petitioner is a commercial quantity and, therefore, the prayer of the petitioner is hit by the bar under Section 37 of the NDPS Act. No doubt, the recovery in the present case includes 200 tablets of *Etizolam*, which falls under the category of commercial quantity, and the other recovery of 4 grams of *heroin* does not fall under the category of commercial quantity. However, at the same time, the custody of the petitioner has come out to be two and a half years and two years have elapsed since the framing of the charges, yet only 4 prosecution witnesses have been examined.

8. 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

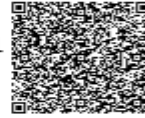


logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such 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”.

9. 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:-

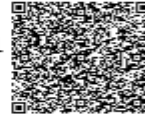
19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as 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. “

10. After hearing learned counsels for the parties, 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 light of Article 21 of the Constitution of India and also in light of aforesaid judgments of Hon'ble Supreme Court.



11. 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.

12. 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

25.02.2025

shweta

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