

**HIGH COURT OF RAJASTHAN****Bench: Justice Kuldeep Mathur****Date of Decision: 27th May 2024**

S.B. Criminal Miscellaneous Bail Application No. 1662 of 2024

S.B. Criminal Miscellaneous Bail Application No. 166 and 1126 of 2024

**RANJEET SINGH ...PETITIONER****VERSUS****STATE OF RAJASTHAN ...RESPONDENT****Legislation:****Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.)****Sections 8/21, 22, 25 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985****Subject:** Applications for bail under Section 439 Cr.P.C. for petitioners arrested in connection with FIR No. 303/2020 registered at Police Station Goluwala, District Hanumangarh, for offenses under the NDPS Act.**Headnotes:**

Bail – Section 439 Cr.P.C. – NDPS Act – Prolonged Custody and Delay in Trial – Bail applications by petitioners arrested with 23600 tablets of Tramadol Hydrochloride. Petitioners in custody since 27.11.2020, with trial

progress minimal, citing only 3 out of 13 witnesses examined over 3.5 years. Held: Prolonged incarceration violates Article 21 of the Constitution. Supreme Court precedents support bail when custody exceeds a substantial part of the prescribed sentence and trial delay not attributable to petitioners. Bail granted. [Paras 1-13]

Criminal Law – Bail in NDPS Cases – Twin Conditions under Section 37 – Supreme Court in Rabi Prakash v. State of Odisha interpreted prolonged incarceration and delayed trials as grounds for bail despite Section 37 NDPS Act conditions. Constitutional courts retain bail discretion on Part III violations. [Paras 5, 8-10]

Decision – Bail Granted – Petitioners Ranjeet Singh and Preetpal Singh granted bail due to prolonged custody and lack of trial progress. Petitioners must furnish personal bonds of Rs. 1,00,000/- each and two sureties of Rs. 50,000/- each. Conditions include mandatory court appearance and non-misuse of bail. [Paras 12-14]

#### **Referred Cases:**

- Union of India v. K.A. Najeeb\_ (2021) 3 SCC 713
- Rabi Prakash v. State of Odisha\_ (Special Leave to Appeal (Crl.) No. 4169/2023)
- Umesh Vyas v. State of Rajasthan\_ (S.B. Criminal Misc. II Bail Application No. 14958/2022)
- Suraj v. State of Rajasthan\_ (S.B. Cr. Misc. Second Bail Application No. 12906/2022)

**Representing Advocates:**

- **Counsel for Petitioner: Ajay Kumar**

- **Counsel for Respondent: Vijay Kumar**

**ORDER**

**Kuldeep Mathur, J.** - These applications for bail under Section 439 Cr.P.C. have been filed by the petitioners who have been arrested in connection with FIR No.303/2020 registered at Police Station Goluwala, District Hanumangarh, for offences under Sections 8/21, 22 and 25 of the NDPS Act.

2. As per the prosecution, during nakabandi, on 27.11.2020, a team of Police Station Goluwala, recovered total 23600 tablets of Tramadol Hydrochloride from conscious possession of co-accused Harnek Singh and the present petitioners. They were arrested on the spot.

3. Learned counsel representing the petitioners submitted that the petitioners are in custody since 27.11.2020. It was also submitted that trial against the petitioners has commenced but in last more than 3 years and 6 months, out of the total 13 cited prosecution witnesses, only 3 witnesses have been examined till date. Learned counsel submitted that the delay in trial before the competent criminal court is not at all attributable to the present petitioners.

4. Learned counsel thus submitted that in view of the fact that the petitioners are in custody for last more than 3 years and 6 months and the delay in trial is not attributable to them, they deserve to be enlarged on bail.

5. In support of his contentions, learned counsel placed reliance on the order dated 13.07.2023 passed by Hon'ble the Supreme Court in the case

of Rabi Prakash vs. The State of Odisha (Special Leave to Appeal (Crl.) No.4169/2023), wherein Hon'ble the Supreme Court held as under:-

"3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

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."

6. Per contra, learned Public Prosecutor has vehemently opposed the bail application and submitted that petitioners are facing trial for the offences under the NDPS Act and, therefore, the present bail applications deserve to be rejected straightway. Learned Public Prosecutor, however, was not in position to refute the fact that in last 3 years and 6 months, out of total 13 cited prosecution witnesses, only 3 witnesses have been examined till date.

7. Heard learned counsel for the petitioners and the learned Public Prosecutor. Perused the material available on record.

8. Hon'ble the Supreme Court in the case of **Union of India Vs. K.A. Najeer reported in (2021) 3 SCC 713**, while dealing with the cases where fetters are placed on Court's power to grant bail and the trial has not been completed within a reasonable time, observed as under:

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part - III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

9. A coordinate Bench of this Court in the case of Umesh Vyas vs. State of Rajasthan (S.B. Criminal Misc. II Bail Application No.14958/2022), vide order dated 17.03.2023, also observed as follows:

"The Hon'ble Supreme Court in the cases of Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir [Special Leave to Appeal (Crl.) No.3961/2022], Amit Singh Moni Vs. State of Himachal Pradesh (Criminal Appeal No.668/2020), Tapan Das Vs. Union of India [Special Leave to Appeal (Criminal) No.5617/2021], Kulwant Singh Vs. State of Punjab [Special Leave to Appeal (Criminal) No.5187/2019], Ghanshyam Sharma Vs. State of Rajasthan [Special Leave to Appeal (Criminal) No.5397/2019], Nadeem Vs. State of UP [Special Leave to Appeal (Criminal) No.1524/2022] and Mukesh Vs. The State of Rajasthan [Special Leave to Appeal (Criminal) No.4089/2021] has granted bail to the accused persons, against whom the allegations are of transporting or possessing narcotic contraband above commercial quantity, on the ground of custody period

and taking into consideration the fact that the trial against the said accused persons will take time in completion. The Hon'ble Supreme Court has ordered for release of the accused persons who were in custody from two years to four years. Learned Public Prosecutor has opposed the bail application.

Having regard to the totality of the facts and circumstances of the case, I deem it appropriate to allow this fifth bail application solely on the ground of custody period of the accused petitioner and keeping in view the fact that the trial against him has not been completed till date.

Accordingly, without expressing any opinion on the merits of the case, this third bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioner Umesh Vyas S/o Shri Ganeshlal Ji shall be released on bail in connection with FIR No.15/2019 of Police Station Charbhujia, District Rajsamand provided he executes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial."

10. Similarly, in the case of Suraj vs. State of Rajasthan (S.B. Cr. Misc. Second Bail Application No.12906/2022), decided on 27.08.2022, a Coordinate Bench of this Court at Jaipur, while granting bail to accused-petitioner where contraband recovered was above commercial quantity and the accused had suffered custody for a considerable period of time and the trial was likely to take more time to conclude, has held as under:

"16. Another aspect that needs to be mulled over pertains to the dilemma before this Court regarding whether to consider the fundamental right of the accused to a speedy trial or to consider application of the fetter contained in Section 37 of the NDPS Act.

The Apex Court has also upheld orders of High Courts granting bail to accused-petitioners, where alleged contraband was above commercial quantity, looking to the fact that they had suffered imprisonment for a considerable period of time and the trial was likely to take further more time to conclude. In *Amit Singh Moni Vs. State of Himachal Pradesh* (Criminal Appeal No. 668 of 2020), the recovered contraband material 'charas' weighed 3285 gms which was above the demarcated commercial quantity for charas, but Hon'ble the Supreme Court decided that the appellant was entitled to the benefit of bail vide order dated 12.10.2020 as he had completed more than 2 years and 7 months of actual custody and there had been no substantial progress in the trial. In *Mahmood Kurdeya Vs. Narcotics Control Bureau* (Criminal Appeal No. 1570 of 2021), the Apex Court had observed that they were persuaded to pass an order in favour of the appellant as the charge sheet had been filed on 23.09.2018 in that particular matter and still no charges were framed and the trial was yet to commence, therefore, despite the fact that the embargo contained under Section 37 was attracted in the case, the accused was enlarged on bail vide order dated 07.12.2021.

While striking a balance between the statutory bar contained under Section 37 of the NDPS Act and the fundamental right of the accused to get a speedy trial, this Court is of the firm view that an accused person cannot be kept in custody for an indefinite period till the trial is concluded and the presumption of innocence, a well-established principle of criminal jurisprudence, i.e. an accused is innocent until proven guilty, operates in the favour of the petitioner."

11. Having considered the rival submissions, facts and circumstances of the case and the material available on record, this Court prima facie does not find any material available on record that the petitioners are using delay as a defence tactic. This Court also prima facie finds that no material

is available on record indicating that the release of accused-petitioners may create a ruckus in the society or that they will create such a situation where the prosecution witnesses will not come forward to depose against them or that they will otherwise hamper the evidence of prosecution in any manner. The prosecution has also not shown any apprehension that if the petitioners are released on bail then they will surely flee from justice and it will be difficult for the investigating agency to re-apprehend them, if need arises.

12. In view of aforesaid discussion and considering the fact that the petitioners have suffered incarceration for about 3 years and 6 months and the criminal trial has hardly reached the half-way mark, without expressing any opinion on merits/demerits of the case, this Court is of the opinion that the bail applications filed by the petitioners deserve to be accepted.

13. Accordingly, these bail applications under Section 439 Cr.P.C. are allowed and it is ordered that the accused-petitioners- (1) Ranjeet Singh S/o Sh. Jaswant Singh and (2) Preetpal Singh S/o Makkhan Singh shall be enlarged on bail in connection with FIR No.303/2020 registered at Police Station Goluwala, District Hanumangarh, provided each of them furnishes a personal bond in the sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the learned trial Judge for their appearance before the court concerned on all the dates of hearing as and when called upon to so.

14. In case, the petitioners remain absent on any date of hearing or make an attempt to delay the trial by seeking unnecessary adjournments, it shall be taken as a misuse of concession of bail granted to them by this Court. The prosecution, in such a situation, shall be at liberty to move an application seeking cancellation of bail granted to the petitioners today by this Court.





15. It is however, made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application. The trial court shall not get prejudiced by the same.

A copy of this order be placed in each file.

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