

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Jasgurpreet Singh Puri****Date of Decision: 13th May 2024**

Case Nos.:

CRM-M-4258-2024 (O&M)

CRM-M-10978-2024 (O&M)

CRM-M-5486-2024 (O&M)

CRM-M-6950-2024 (O&M)

CRM-M-7535-2024 (O&M)

CRM-M-8725-2024 (O&M)

APPELLANT(S):**I. Shankar SinghPetitioner****II. Angrej SinghPetitioner****III. Randeep Singh @ Rani @ Ramneek Singh @ RammiPetitioner****IV. Kewal KrishanPetitioner****V. Rajinder Masih @ PelePetitioner****VI. Vijay Kumar @ Giyani @ GaviPetitioner****VERSUS****RESPONDENT(S): State of PunjabRespondent****Legislation:**

Sections 21, 27-A, 29, 21-C, 25, 27 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985

Subject:

Criminal miscellaneous petitions under Section 439 Cr.P.C. for the grant of regular bail in cases involving allegations of possession and trafficking of large quantities of narcotics, with a specific focus on procedural delays and long periods of pre-trial incarceration.

Headnotes:

Bail in NDPS Cases – Prolonged Pre-Trial Detention – The court addressed the issue of prolonged pre-trial detention for the petitioners, emphasizing that they had been in custody for more than three years (or approximately two and a half years for some) without significant progress in their trials. The court highlighted that such extended detention, without the completion of trial, violates the fundamental right to a speedy trial under Article 21 of the Constitution.

Delay in Trial – Procedural Difficulties – The court acknowledged that the delay in the trial was primarily due to procedural difficulties, such as the inability to produce the accused from various jails and the theft of case samples. These factors contributed to the lack of examination of prosecution witnesses despite charges being framed over a year prior.

Non-Admissibility of Disclosure Statements – The court noted that most petitioners were nominated based on the disclosure statements of co-

accused, which are not admissible as evidence under the NDPS Act, as per the Supreme Court's ruling in Tofan Singh v. State of Tamil Nadu.

Comparative Analysis and Parity – The court considered the grant of bail to a similarly placed co-accused (Avninder Singh @ Shanty) who was released on bail under similar circumstances. This precedent was used to argue for parity in granting bail to the current petitioners.

Section 37 NDPS Act – Application of Bail Conditions – The court referred to various Supreme Court judgments which highlighted that prolonged detention without trial and procedural delays could override the strict conditions imposed under Section 37 of the NDPS Act, thus warranting bail.

Decision:

All six petitions were allowed. The petitioners were granted regular bail, subject to furnishing bail bonds/surety to the satisfaction of the trial court/Duty Magistrate concerned, if not required in any other case. The court specified that the observations made were for the purpose of deciding the bail petitions and not on the merits of the cases.

Referred Cases:

- Tofan Singh v. State of Tamil Nadu, [2021 (1) RCR (Criminal) 1]
- Satender Kumar Antil v. Central Bureau of Investigation and another, [2022 (10) SCC 51]
- Mohd. Muslim @ Hussain v. State (NCT of Delhi), [2023 AIR (SC) 1648]
- Dheeraj Kumar Shukla v. The State of Uttar Pradesh, [Special Leave to Appeal (Crl.) No.(s) 6690 of 2022]
- Rabi Prakash v. State of Odisha, [Special Leave to Appeal (Crl.) No.4169 of 2023]

Representing Advocates:

For petitioners:

Mr. Tushar Sharma

Mr. Amritpal Singh Gill

Mr. Ruhani Chadha

Mr. Sarfraj Hussain

Mr. Ranwant Singh

For respondent: Mr. Adeshwar Singh Pannu, AAG, Punjab

ORDER

JASGURPREET SINGH PURI , J. (Oral)

1. All the six petitions are taken up together for final disposal with the consent of learned counsel for the parties since all the six petitions arise out of the same FIR and prayer in all the six cases is for the grant of regular bail.
2. All the six 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.144 dated 29.10.2020, under Sections 21/27-A/29 & 21-C/25/27 (added later on) of NDPS Act, registered at Police Station STF Phase-4, Mohali, District SAS Nagar.

3. All the learned counsels for the petitioners in all the aforesaid cases submitted that the allegations in the present case were that the police received a secret information with regard to coming up of two cars, one was Endeavour and second was Maruti Ciaz and huge contraband could be seized from the aforesaid two cars. Thereafter, when the Endeavour car was intercepted on 01.11.2020, then there was a recovery of 18 kgs. of Heroin and 6 kgs. of ICE having salt of *Amphetamin* from the aforesaid Endeavour car and from the car, one of the co-accused namely, Manjeet Singh @ Munna was arrested. The aforesaid accused is not petitioner in the present cases. After two days i.e. on 03.11.2020, the other car namely, Ciaz was also intercepted and from the aforesaid car, there was a recovery of 10 kgs. of Heroin and two persons were arrested from the aforesaid car namely, Angrej Singh (Petitioner in CRM-M-10978-2024) and Vishal (Non- petitioner).

4. Thereafter, the investigation started and on the basis of disclosure statement made by a co-accused Vishal, Angrej Singh, Manjeet Singh @ Munna, one other co-accused namely, Rajinder Masih were arrested and there was a recovery of 3 kgs. of Heroin and 2 kgs. of chemicals to prepare Heroin. An amount of Rs. 25 lacs was also recovered from other co-accused namely, Gurdeep Singh from whom there was also a recovery of 418 grams of Heroin but he is not a petitioner in any of the present cases. In this way, five petitioners namely, Shankar Singh, Randeep Singh @ Rani @ Ramneek Singh @ Rammi, Kewal Krishan, Rajinder Masih @ Pele and Vijay Kumar @ Giyani @ Gavi were nominated on the basis of disclosure statement made by a co-accused and so far as the petitioner namely, Angrej Singh is concerned, he was stated to be arrested along with other co-accused namely,

Vishal from Ciaz car but his name was not mentioned in the FIR. In the FIR, the names of Manjeet Singh @ Munna and Vishal were mentioned. All the learned counsels for the petitioners have stated that all the petitioners are in custody for more than 3 years except petitioners Shankar Singh and Vijay Kumar @ Giyani @ Gavi who are in custody for about 2 ½ years and one of the co-accused namely, Avninder Singh @ Shanty who was also nominated on the basis of disclosure statement of a coaccused has since been granted regular bail by a Co-ordinate Bench of this Court on 07.04.2021 in CRM-M-14138-2021 on the ground that he was also nominated on the basis of disclosure statement of a co-accused.

5. Learned counsels further submitted that on the last date of hearing, this Court had rather called for report from the learned trial Court as to why there had been a delay in the trial because in the present case the charges were framed on 05.01.2022 and thereafter again charges were framed on 27.03.2023 and trial of the case has not progressed at all and no prosecution witness has been examined despite the fact that more than one year has elapsed after the framing of the charges. They submitted that although the petitioners are involved in some other cases as well but in the present case, they have been falsely implicated and even otherwise also, since they have been nominated on the basis of disclosure statement of a coaccused (except for petitioner Angrej Singh), they may be considered for the grant of regular bail. They also referred to a judgment of Hon'ble Supreme Court in **Tofan Singh V/s. State of Tamil Nadu [2021 (1) RCR (Criminal) 1]** to contend that the disclosure statement of a co-accused is not admissible in evidence.

6. Learned counsels also relied upon the judgments of Hon'ble Supreme Court in **Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]**, **Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]**, **Dheeraj Kumar Shukla**

v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022) and Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023. They also submitted that in view of the facts and circumstances of the present case and especially in view of the fact that the trial of the case has been delayed at the hands of the prosecution and not because of the fault of the petitioners, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioners.

7. On the other hand, Mr. Adeshwar Singh Pannu, learned AAG, Punjab on instructions from ASI Sukhwinder Singh who is present in the Court submitted that so far as the custody of the petitioners is concerned, the same is correct. He also submitted that after the framing of the charges on 05.01.2022 and again on 27.03.2023, the trial of the case has not progressed. He submitted that however one witness has been examined on 10.05.2024 but he is only a formal witness who had deposited the samples.

8. Learned State counsel also submitted that so far as the antecedents of all the petitioners are concerned, petitioner Angrej Singh is involved in two more cases out of which one is under the NDPS Act and one under IPC, petitioner Shankar Singh is involved in two more cases out of which one is under Section 307 IPC and other is under the Prisons Act, petitioner Randeep Singh is involved in one more case under the NDPS Act, petitioner Kewal Krishan is involved in 11 more cases including 4 under the NDPS Act, petitioner Rajinder Masih @ Pele in involved in one more case under Section 188 IPC and petitioner Vijay Kumar is involved in 13 more cases including 8 under the NDPS Act. He has however opposed the grant of bail to the petitioners on the ground that since the recovery falls in the category of commercial quantity, the prayer of the petitioners is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that the petitioners are habitual offenders and therefore, they are not entitled for the grant of regular bail.

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

10. On the last date of hearing, this Court had called for report from the learned trial Court with regard to the stage of the case along with information as to why more than one year has elapsed after the framing of the charges but no prosecution witness has been examined and also as to why the interlocutory orders have not been uploaded on the website. The learned trial Court had sent a report dated 08.05.2024 in which it has been so stated that 14 accused were charge-sheeted in the present case and these accused are lying lodged in different jails at Bathinda, Kapurthala, Faridkot, Muktsar Sahib and Ludhiana which fall in the State of Punjab and also in Sabarmati Jail in State of Gujarat and they are not being produced on the date fixed by the Court by the concerned Superintendents of different jails in which one or the other accused is lying lodged and for want of production of one or the other accused on different dates of hearing, the prosecution witnesses could not be examined. It has also been reported by the learned trial Court that the samples which were drawn in the present case along with case property in other unconnected cases lying deposited with District Nazir, Ludhiana stands stolen leading to lodging of FIR No.115 of 2021 in Police Station Division No.5, Ludhiana and now the samples have been redrawn in the present case. Apart from above, now the interlocutory orders have been uploaded on the website.

11. From the perusal of the report sent by learned Additional District Judge, Ludhiana would show that more than 1 year has elapsed after the framing of the charges and because of the procedural difficulties i.e. accused being lodged in different jails and not being produced in the Court and also because of the fact that the samples which were drawn and deposited with District Nazir, Ludhiana have been stolen and consequently, an FIR has also been lodged in this regard and there had been delay in the trial. In other words, the trial has been delayed because of the procedural difficulties and

the aforesaid reasons. However, at the same time the petitioners have faced incarceration for more than 3 years except petitioners Shankar Singh and Vijay Kumar @ Giyani @ Gavi who have faced incarceration for about 2½ years and till date no prosecution witness has been examined except one who is a formal witness only. The petitioners are also stated to be involved in many other cases but as per learned counsel for the parties, all the petitioners except for petitioner Angrej Singh were nominated on the basis of disclosure statement of a co-accused. Co-accused namely, Avninder Singh @ Shanty has already been extended the benefit of regular bail by a Coordinate Bench of this Court on 07.04.2021 in CRMM-14138-2021 and he was also nominated on the basis of disclosure statement of a co-accused.

12. Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*** has discussed this serious issue. 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 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 (Supra)*** has dealt with this issue. The relevant portion of the aforesaid judgment contained in para No.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.

14. 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.”

15. Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (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.

16. After hearing the learned counsels for the parties, this Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the long custody of the petitioners and the stage of the trial, 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.

17. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to all the petitioners.

18. Consequently, all the six petitions are allowed. All the petitioners shall be released on regular bail subject to furnishing bail bonds /surety to the satisfaction of the learned 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 meant for the purpose of deciding the present petitions only.

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