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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34449-2024

DATE OF DECISION: 05.08.2024

DEEPAK KUMAR ALIAS BEERU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Mohit Kumar, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 129, dated 10.09.2023, under Sections 21 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City-I, Malerkotla, District Malerkotla.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

'Copy of ruqa, SHO, Police Station City 1 Malerkotla. Jai Hind. Today, I SI alongwith ASI Harjit Singh 496/Sang, HC Daljit Singh 290/BR, HC Manpreet Singh 385/Sang, SC Swaranjit Singh 1719/Sang, CT Lovepreet Singh 2323/Sang were patrolling in government vehicle Bolero bearing no. PB-65- BA-8115 and checking suspicious and vehicle and the car was driven by SC Nirbhai Singh 990/Sang alongwith laptop and printer, inverter etc. and were present near Jarg Chowk under the bridge at Malerkotla and thereafter, at near



about 3 p.m. one secret informer came before me and gave the information that Iftikhar @ Raja Kasai son of Zulfikar, resident of Mohalla Hajan Wala, Malerkotla, Deepak Kumar @Veeru son of Harbans Lal, resident of Ravidas Nagar, Malerkotla and Mohammad Shamshad @ Ghudha son of Mohammad Bashir, resident of Mohalla Jhulaiya Wala, Qila Rehmatgarh, Malerkotla who are doing the work of selling chitta/heroin after bringing the same from outside and today also Iftikhar @ Raja, Deepak Kumar @ Veeru and Mohammad Shamshad @ Ghudha alongwith chitta/heroin are sitting in the house of Iftikhar @ Raja Kasai at Mohalla Hajan Wala, Malerkotla near Jarg Chowk Malerkotia and waiting for some customer and they after selling the chitta/heroin distribute the money among themselves, Iftikhar @ Raja is aged about 28 years healthy body Mulla fashion and he is wearing black colour T-shirt, Deepak Kumar @ Veeru is aged about 28 years, thin and fast body Mulla fashion and wearing blue colour T-shirt and Lower, whereas Mohammad Shamshad @ Ghudha is aged about 33 years, thin body Mulla fashion and wearing grey colour T-shirt. In case now the raid is conducted at the house of Iftikhar @ Raja Kasai located at Mohalla Hajan Wala, Malerkotla then the abovesaid can be overpowered alongwith heavy quantity of chitta/heroin and with money which has been earned after selling chitta/heroin. Information is reliable and trustworthy. Therefore, I SI introduced the secret informer to the police officials and thereafter, conducted the raid on the basis of information at the house of Iftikhar @ Raja Kasai at Mohalla Hajan Wala, Malerkotla near Jare Chowk, Malerkotla and the time was near about 3.30 p.m and thereafter, as disclosed by secret informer we entered into the house disclosed by him and after entering the house in the room which is located on the left side 3 persons were seen sitting on the bed and searing something with their hands from the white colour plastic polythene bag and they after seeing the police party got scared and left the plastic bag on the



bed and tried to fled away from the spot and thereafter, I, SI alongwith police officials overpowered the abovesaid persons and asked their name and thereafter, the healthy person disclosed his name as Iftikhar @ Raja Kasai son of Zulfakar resident of Mohalla Hajan Wala near Jarg Bye- pass, Malerkotla and the thin person disclosed his name as Deepak Kumar @ Veeru son of Harbans Lal, resident of Ravi Dass, Nagar, near Chhoti Eidgah Malerkotla and the third person disclosed his name as Mohammad Shamshad @ Ghudha son of Mohammad Bashir, resident of Mohalla Jhuliyen Wala, Qila Rehmatgarh, Malerkotla. Thereafter, I, SI picked the two plastic white colour polythene bag from the bed which has been left by the abovesaid persons and checked the same and from the one plastic polythene bag some off white article/substance was seen and thereafter, I checked the same by smelling it and thereafter, chitta/heroin was recovered from the same. Thereafter, I SI tried to join the private witness in the investigation from the neighbourhood, but everyone disclosed their helplessness and no person join the investigation. Thereafter, I, SI weighed the plastic polythene bag carrying chitta/heroin from the computerized weighing machine and the weight of the same alongwith plastic polythene bag was 300 gm. Thereafter, the computerized weighing machine and the weight of the same alongwith plastic polythene bag was 300 gm. Thereafter, the recovered plastic polythene bag carrying chitta/heroin was put in one plastic box and thereafter, the same was put in one cloth bag and the separate bundle was prepared. Thereafter, I SI checked the second white colour plastic polythene bag after picking the same from the bed and from the same 500/500 denomination currency in heavy quantity was recovered and thereafter, the notes of denomination of 500/500 were counted and the same was 60 and thereafter, total 30,000/ of drug money was recovered. Thereafter, the recovered currency note was put in the same white colour plastic bag and thereafter, the same



was put in one cloth bag and the separate bundle was prepared. Thereafter, I SI affixed my stamp bearing word BS upon the bundle of cloth bag carrying plastic box having chitta/heroin and the bundle of cloth bag carrying drug money and the separate sample of seal was prepared. After using the stamp the same was handed over to ASI Harjit Singh 496/Sang. Thereafter, I SI taken into police custody the sealed bundle having plastic box carrying chitta/heroin and the sealed bundle carrying drug money alongwith sample of the stamp through separate farad. Thereafter, the witness of the witnesses were appended upon the same. Therefore, Iftikhar @ Raja Kasai, Deepak Kumar @ Veeru and Mohammad Shamshad @ Ghudha by keeping chitta/heroin and by selling the same further has committed the offence punishable under Section 21/61/85 of NDPS Act. Thereafter, I SI sent the ruqa for registering the case under abovesaid Sections against Iftikhar @ Raja Kasai son of Zulfkar, resident of Mohalla Hajan Wala, near Jarg Bye- pass, Malerkotla, Deepak Kumar @ Veeru son of Harbans Lal, resident of Ravidass Nagar, near Chhoti Eidgah, Malerkotla and Mohammad Shamshad @ Ghudha son of Mohammad Bashir, resident of Julayian Wala, Qila Rehmatgarh, Malerkotla after getting the same typed on laptop and thereafter, taking out its printout and the same has been sent at Police Station Malerkotla by hand Ct. Lovepreet Singh 2323/Sang. Case be registered and file number be informed. Control room Malerkotla be also informed. Special reports be issued. I am investigating on the spot. Today, jurisdiction Mohalla Hajan Wala, near Jarg Chowk, Malerkotla at 5 p.m. Sd/ SI Baljit Singh 735/Sang CIA Mehrona dated 10.09.2023. On receiving the ruqa abovesaid case under abovesaid section has been registered against Iftikhar @ Raja, Deepak Kumar @ Veeru and Mohammad Shamshad @ Ghudha and the entry was incorporated in the record. Control Room Malerkotla informed through email. Copies of FIR alongwith special report is being sent by hand SC Satnam Singh 1115/Sang



to Illaqa Magistrate and Senior Officers for information. Copy of original ruqa alongwith FIR is handed over to CT Lovepreet Singh 2323/Sang and for further investigation SI Baljit Singh 735/Sang CIA has been called near Mehrona.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that no offence whatsoever is made out against the present petitioner. As per the case of prosecution, alleged recovery of 300 grams of Heroin Vials were recovered from the petitioner and the co-accused. The petitioner has been in custody since 10.09.2023. He submits that investigation is complete as challan stands presented on 23.01.2024 and charges are yet to be framed and no fruitful purpose would be served by keeping the petitioner behind the bars. The other contention raised by counsel for the petitioner is that co-accused namely Mohd. Shamshad @ Ghudha has already been granted concession of bail by this Court vide order dated 23.05.2024 passed in ***CRM-M-19749-2024***.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 10 months and 22 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is involved in other FIRs also and 300 grams Heroin has been recovered from the petitioner and the co-accused.

4. **Analysis**

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 10 months and 22 days, co-accused has already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 23.01.2024 and charges are yet to be framed, which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period.

Reliance can be made upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, ***2018(2) R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general



rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.



5. *To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658*

6. *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

7. *However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”*

Therefore, to elucidate further, this Court is conscious of the basic fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the



mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other case and involvement of the petitioner in other cases is concerned, the petitioner is on bail in those cases and reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “Baljinder Singh alias Rock vs. State of Punjab” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

05.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>