

CRM-M-41425-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(222)

CRM-M-41425-2024
Date of Decision : 02.09.2024

Iqbal Singh @ Lalha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Impinder Singh Dhaliwal, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.10, dated 12.01.2021 under Sections 21(c), 18(b), 61 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bhogpur, District Jalandhar, Punjab.

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

*“FIR No. 10 dated 12.01.2021 U/s 21 (c), 18 (b) NDPS Act, 1985 P.S. Bhogpur District Jalandhar (Rural).
MHC P.S. Bhogpur, today I SI/SHO alongwith ASI Karnail Singh 15, ASI Inderjit Singh 43, CT Gurinderjit Singh 1084, CT Jagdeep Singh 1912, CT Amarjit Singh 1879 on govt vehicle having No. PB-65-AT-0214 whose driver was*



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ASI Mahinder Pal 826 were on patrolling and search of bad persons and were present at T-Point Adampur turn, Bhogpur when your telephone call was received that SI Balwinder Singh No. 121/Kpt P.S.Bhogpur has telephonically informed that he alongwith ASI Satpal Singh 525, HC Manohar Lal 317 and other employees were present near village Moga Road, near Sugar Mill Bhogpur for patrolling and checking of bad persons when a secret informer gave him information that Iqbal Singh @ Kalla son of Major Singh resident of village Ganga P.S. Dabwali District Sirsa who is supplying Heroin and Opium in huge quantity by brining from Haryana and supplying in Jalandhar area and today Iqbal Singh @ Kalla is coming on foot from Bhogpur to village Mog, Bhattian and if he is stopped and checked then heavy quantity of Heroin and opium can be recovered from him. Said SI Balwinder Singh on the basis of information given by secret informer, during nakabandi, has apprehended Iqbal Singh @ Kalla and is asking for sending an investigating officer at the spot. Thereupon I SI/SHO alongwith fellow officials proceeded to and reached Moga Road, near Sugar Mill Bhogpur where SI Balwinder Singh 121 alongwith fellow officials and apprehended person met me. He apprised me of the fact and produced the apprehended person before me. I SI/SHO Inquired his name and address. He disclosed his name as Iqbal Singh @ Kalla son of Major Singh president of village Ganga P.S. Dabwali District Sirsa, Haryana. I SI/SHO THE apprised him of my identity and identity of fellow officials. I SI/SHO informed Iqbal Singh @ Kalla about his legal right and told him that if you want to get your search conducted from some Magistrate or Gazetted officer then they can be called at the spot. Iqbal Singh Kalla that I want to get my search conducted from some Gazetted officer. Thereupon I SI/SHO from my



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official mobile No. 95179-87514 called Sh. Harinder Singh DSP Sub Division, Adampur on his mobile No. 95179-87115 and apprised him of the fact and requested him to reach at the spot. Then we waited for him and after 15 minutes Sh. Harinder Singh DSP Sub Division, Adampur he alongwith his gunman staff reached at the spot in govt. vehicle. He was apprised about the fact. Iqbal Singh Kalla was produced before DSP Sahib. He Inquired his name and address and after doing so informed him of his identity and stated that I am Harinder Singh DSP Sub Division, Adampur and I am wearing my uniform as per my rank. I suspect you that you have some intoxicant substance and your search is to be conducted but you have legal right to get your search and search of your bag conducted from some Magistrate or Gazetted officer. Upon this Iqbal Singh Kalla stated that I have faith in you and you can conduct my search and search of my bag. Thereupon DSP Sahib prepared the consent memo of Iqbal Singh @ Kalla and he signed the same in Hindi and witnesses also signed the same. Before conducting search as per directions of DSP effort was made to associate a public witness but every expressed their difficulty. Then I SI/SHO under the supervision of DSP Sahib and as per his direction, in the presence of fellow officials, conducted the search of Iqbal Sir gh @ Kalla and from the dub of the pant worn by him under his jacket and shirt one heavy polythene bag black coloured was recovered and upon checking it was found to contain one more polythene bag which contained Heroin. The recovered heroin was weighed with electronic weighing scale and was found to be 1 Kg Heroin. The same was put back into the black polythene bag and then into a plastic container and parcel was prepared. The parcel was sealed by me with my seal "MS" and by DSP Sahib with his seal "HS". Then I SI/SHO conducted the



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search of bag in possession of Iqbal Singh @Kaila and from the sald bag underneath the clothes one transparent polythene bag containing opium was recovered. On weighing the oplum with electronic weighing scale it was found to be 1 Kg oplum. The same was put into a plastic container and parcel was prepared. The parcel was sealed by me with my seal "M3" and by DSP Sahib with his seal "HS". Sample seal was separately prepared and seal after use was handed over to ASI Inderjit Singh 43. DSP Sahib retained his seal. The recovered Heroin 1 Kg duly sealed with seals MS/HS and recovered opium 1 Kg duly sealed with seal MS/HS alongwith black bag and clothes i.e. 2 shirts and one pant were taken into police possession vide separate memo. Accused Iqbal Singh @ Kalla by keeping in his possession 1 Kg Heroin and 1 Kg Oplum has committed offence U/s 21-C, 10-8, 61, 85 of NDPS Act. Ruka is being sent through C. Gurinderjit Singh 1084 to P.S. for registration of case. Number of the case be informed. Control room be informed. Special report be sent to Magistrate Sahib and concerned officers. I SI/SHO alongwith fellow officials am busy with investigation at the spot. Sd/- Manjit Singh SI/SHO P.S.Bhogpur dated 12.01.2021. Today in the area of Mill road, Bhogpur at 1:30 PM."

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in this case and no specific role has been attributed to the petitioner. There is no evidence against the petitioner which would connect him with the alleged commission of offence. He further argues that recovery of 1kg. Heroin and 1kg. Opium has been falsely planted upon the

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petitioner and the petitioner is behind the bars since the date of arrest and has undergone 03 years, 07 months and 16 days in custody, investigation in the case is complete. *Challan* stands presented on 12.05.2021 and charges framed on 25.05.2022. Since framing of the charges, out of total 10 prosecution witnesses, only four witnesses have been examined as on date. Petitioner is not involved in any other criminal case or under the NDPS Act, meaning thereby that he is not a habitual offender. The trial of the case is moving at a snail's pace and may take long time to conclude and therefore, further incarceration of the petitioner would serve no useful purpose.

Notice of motion.

On behalf of the State

4. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab accepts notice on behalf of the respondent-State and has produced the custody certificate dated 31.08.2024 of petitioner, which is ordered to be taken on record and vehemently opposes the concession of regular bail to the petitioner on the ground that allegations against the petitioner are of serious nature. However, on instructions from the investigating officer, he could not controvert the custody period undergone by the petitioner.

5. **Analysis**

Investigation in the case is complete and challan stands presented on 12.05.2021 and charges framed on 25.05.2022. Out of the total 10 prosecution witnesses, only four witnesses have been examined as on date which makes it apparent that trial of the case may take long time to conclude therefore, no useful purpose would be served by further incarceration of the petitioner.



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Hon'ble the Supreme Court in its latest judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571, observed as under :-

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

Reliance can also be placed 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 are 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*



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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) vs. 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.

6. **DECISION**

Be that as it may, considering the aforesaid facts and circumstances, investigation in the present case has already been completed

and challan stands presented on 12.05.2021. Trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner behind the bars. Accordingly, the petitioner is directed to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In light of the aforesaid discussions, the present petition is, hereby, allowed.

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

(SANDEEP MOUDGIL)
JUDGE

September 02, 2024
Manpreet

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