

CRM-M-14904-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-14904-2023

Date of decision : December 06, 2023

Ram Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.S. Rana, Advocate, for the petitioner
Mr. Bhupender Singh, DAG, Haryana

KULDEEP TIWARI,J. (ORAL)

1. Through the instant 2nd petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No. 159 dated 25.5.2020, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'N.D.P.S. Act'), Sections 27-A & 181 of Motor Vehicles Act, 1988 added later on, registered at P.S. Chandimandir, Panchkula, District Panchkula.

ALLEGATIONS AGAINST THE PETITIONER

2. The allegations, as levelled in the present FIR against the petitioner are that, on 25.5.2020, at about 7.30 PM, the petitioner was apprehended by the police officials of P.S. Chandimandir, Panchkula, while being in conscious possession of 200 kgs of poppy husk (5 bags of 40 kgs each).

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) Petitioner has been falsely implicated in the present case;*
- (ii) Non-compliance and infringement of the mandatory provisions, as enshrined in Section 50 of the N.D.P.S. Act, which renders the alleged recovery of contraband to be covered by clouds of suspicion;*
- (iii) Petitioner has undergone incarceration of more than 3 years and 6 months;*
- (iv) Investigation has already been completed, therefore, custody of the petitioner is no longer required;*
- (v) The petitioner is not involved in any other criminal case;*
- (v) All the witnesses cited by the prosecution are official witnesses, therefore, there is no likelihood or apprehension qua the petitioner influencing or threatening the witnesses.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent of Central Jail, Ambala. The custody certificate reveals that the petitioner is behind the bars since 1.6.2020, and as on date, he has suffered incarceration of 3 years, 6 months and 5 days. This Court specifically put a query to the learned State counsel regarding the

stage of trial, who informed this Court, on instructions imparted to him by SI Surjit Kumar that final report was filed on 20.8.2020 and charges were framed on 20.2.2021. Till date only 9 witnesses have been examined out of total 22 prosecution witnesses. He further submits that the next date of hearing before the trial court is fixed for 20.12.2023. This Court has also asked for the reasons for non-examination of the prosecution witnesses, to which no satisfactory reply is coming forward from the learned State counsel. The custody certificate further reveals that the petitioner is not involved in any other criminal case.

ANALYSIS

6. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled **“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535**. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

7. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular

bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

8. In “**Nikesh Tarachand Shah V. Union of India**”, (2018)

11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to

the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor* [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as

necessarily justifying the grant or refusal of bail.”

9. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. *The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.*

10. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

11. The reason for forming the above inference emanates from the factum that:- (i) as per custody certificate (supra), the

petitioner is not involved in any other criminal case; (ii) no fruitful purpose would be served by keeping the petitioner behind the bars, who undergone actual custody of approx. 3 years 6 months and 5 days and (iv) all prosecution witnesses are official witnesses.

12. Insofar as non-compliance and infringement of Section 50 of the N.D.P.S Act is concerned, it is a highly debatable issue, which is to be addressed by the learned trial Court concerned, after appreciating the evidence, which may become adduced before it.

13. The Hon'ble Supreme Court in **Rabi Prakash vs The State of Odisha, SLP (Crl.) No. 4169/2023, decided on 13.7.2023** has held that 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. The relevant para No. 4 is reproduced hereinafter:-

“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.”

14. In the instant case, the petitioner has suffered incarceration of 3 years, 6 months and 5 days as.

FINAL ORDER

15. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

16. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

December 06, 2023

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**(KULDEEP TIWARI)
JUDGE**

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>