

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63157-2023
Date of decision: 20.12.2023

BALJIT SINGH @ KALA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.K. Singla, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.66 dated 03.07.2020 registered under Sections 22, 25, 29 of NDPS Act, 1985 at Police Station Rureke Kalan, District Barnala.

2. The present FIR was lodged on the basis of ruqa sent by the Investigating Officer on the following allegations:-

“Copy of ruqa, officer incharge of Police Station Rureke Kalan, Jai Hind, Today, I, Insp. alongwith ASI Naib Singh 682, HC Sukhvir Singh 568/BR, HC Lovepreet Singh 900/BR, HC Gurpreet Singh 831 were travelling in government vehicle bearing registration number PB-13-BA-1844 driven by C Jagsir Singh 401 and were present at Nakabandi with regard to checking of suspected persons at Barnala-Mansa main road from where link road was going towards village Kaneke in the area of Dhanaula then time was about 5 AM then my special source has come and told me separately that Humesh Kumar alias Mintu alias Baba Son of Kaka Singh, resident of Karrail, District Sangrur, aged about 35 years and Baljit Singh Son of Bara Singh, resident of Bhikhi, District Mansa aged about 37/38 years in connivance with each other after bringing intoxicant tablets from outside and are supplying the intoxicant tablets on higher level in the

area of District Mansa, Sangrur, Patiala and Barnala and who are having Car bearing No.DL-5CJ-8850 of white colour Mark Swift. Today, they are bringing intoxicant tablets from outer States and about to supply in the area of District Mansa and Barnala and if they be searched by conducting Nakabandi at Main Road then they can be apprehended coming from Mansa side towards Barnala and earlier cases with regard to selling of intoxicant contrabands was registered against them. Information is believable and true. Therefore, the act of Humesh Kumar alias Mintu and Baljit Singh for keeping and selling intoxicant tablets fulfills the offence under Section 22, 25/61/85 of NDPS Act. This information was given on wireless set to ASI Sharif Khan CIA Barnala and requested to reach on the spot alongwith police party for initiation of proceedings and SHO of Police Station Rureke Kalan also informed. Therefore, ruqa against Humesh Kumar alias Mintu and Baljit Singh under the above said Sections sent through C Gurpreet Singh 831 to Police Station Rureke Kalan for registration of case. Case number be intimated after registration of case to ASI Sharif Khan. I was present on the spot for investigation. Today, Main road from Barnala to Mansa in the area of Dhaula time 5:30 PM. Sd/- Baljit Singh Insp., Incharge CIA Barnala dated 03.07.2020. Upon receiving ruqa, the above said case number against the accused person has been registered."

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was arrested on 03.07.2020. The investigating agency after completing the investigation filed the final report under Section 173 Cr.P.C. on 16.12.2020. Learned trial Court framed the charges on 14.12.2021 and out of 19 witnesses only 04 have been examined till date. Learned counsel further submits that co-accused namely Humesh Kumar @ Harmesh Kumar @ Mintu @ Baba has already been granted the concession of regular bail vide order dated 24.11.2023 in case bearing CRM-M No.46038 of 2023, by this Court. The petitioner is languishing in jail for the last more than three years and the trial of the case is progressing at a snail's pace which violates the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India, which guarantees the right to speedy trial.

4. Per contra learned State counsel has opposed the grant of regular bail on the ground that the petitioner is a habitual offender and he has been involved in four more cases under the NDPS Act. Huge quantity of 1,50,000 intoxicating tablets of Alprase 0.5 and 30,000 intoxicating tablets of Clovidol-100 SR have been recovered from the petitioner and his co-accused involving the commercial quantity, therefore, he does not deserve the concession of regular bail.

5. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last court.

6. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play and it would prevail over the embargo created by Section 37 of the NDPS Act.

7. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka,***

(2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.

8. The Hon'ble Supreme Court has recently in ***Mohd. Muslim Hussain Vs. NCT 2023 AIR (SC) 1648*** has concluded as follows:-

"....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 463A which is applicable to offence 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....."

Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling....."

9. As far as arguments of learned State counsel for rejection of bail to the petitioner due to his involvement in other cases under the NDPS Act is concerned, it has to be seen in the light of the law laid down by Hon'ble Supreme Court in ***Prabhakar Tewari Vs. State of U.P. and Another 2020(1) RCR (Criminal) 831*** and also the decision dated 18.07.2023 passed by Hon'ble Supreme Court in Special Leave Petition (Crl.) No. 4637/2023, titled as ***Subhabrata Roy @ Bapi Roy @ Roy Bapi Vs. State of West Bengal***, vide which the appellant therein who had as many as 19 cases, including 02 cases under the NDPS act, registered or pending against him, has since been granted the benefit of bail.

10. Having considered the entire facts and circumstances of the case especially the fact that the petitioner has been in custody for more than 03

years and 04 months and 11 prosecution witnesses out of 19 are yet to be examined and the trial has not even reached the halfway mark.

11. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

12. Nothing observed hereinabove shall be construed as an expression of opinion of this Court on the merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

December 20, 2023
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |