



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-2054-2024

DATE OF DECISION: 16.10.2024

HARVINDER @ MUNNA

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Suresh Nain, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession of regular bail for the petitioner in FIR No.464 dated 28.06.2023, under Sections 15(c) of the The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Azad Nagar, District Hisar.

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

‘To the Incharge Officer Police Station Azad Nagar, Hisar, Jai Hind. Today on 28.06.2023, I ASI Alongwith fellow employees ORP/HC Raghuvir Singh No. 1645/Rohtak, E/SI Baljeet Singh No. 670/FTB, EHC Vijay Kumar No. 591/Jind, E/HC Sunil Kumar No. 1370 Hisar, constable shri Amit Kumar No. 1255/Jind with laptop and printer in govt. passenger vehicle No. HR-03X 9291 Driven by constable Subham 640/Hansi were on crime patrolling near village Chaudhriwas toll plaza on NH 52 Rajgarh to Hisar. Then a secret informer came and he informed that Harvinder Singh son of Darshan Singh resident of Reond Kalan, jawan Nagar Police



Station Boha, District Mansa, Punjab along with his girlfriend Charanjeet Kaur wife Amrik Singh son of Harbans Singh resident of Reond Kalan, District Mansa, Punjab with car no. PB- 15F-0958, Maruti Swift white in color, are coming and works to sell poppy husk (Dada post) after taking from Rajasthan. They have gone to Rajasthan to buy Doda post yesterday on 27.06.2023 evening. Today itself, after buying poppy from Rajasthan they will go to Punjab via Rajgarh Highway to sell it in Punjab. If the blockade is done immediately, then Harvinder Singh, his girlfriend Charanjit Kaur along with the above mentioned vehicle along with Doda Poppy can be caught on the spot. On finding information believable a report under 42 NDPS Act through EHC Vijay Kumar No. 591/Jind is being sent to the police station for information to higher officials. After report information be provided and inform higher officer be informed and please send a lady police employee to the spot. I, ASI, after informing the co-employees about the informer, started a blockade on the highway from village Chaudhariwas toll plaza towards Siwani on Government National Highway No. 52 Rajgarh-Hisar Road and checked the numbers of the vehicles coming from Siwani. At that time, lady police constable Pooja Rani No. 189/Hisar arrived at the spot. After some wait, after some time, as per the information given by the informant, vehicle number PB-15F- 0958, Maruti Swift white color was seen coming from Siwani side. When I, ASI left the government vehicle along with the driver at the Naka and signaled the driver of Vehicle no. PB-15F-0958 along with other fellow employees some distance ahead to stop the vehicle, the driver suddenly seeing the police party in front, slowed down his car once but driver started running increasing the speed tried to break the blockade at high speed, constable Shubham No.640/Hansi showed bravery, without caring for his life, he stopped the government vehicle in front, due to which vehicle no. PB-15F-0958 had a direct collision with government vehicle No. HR-03X-9291 and both the vehicles Got damaged. When the vehicle stopped, a young boy and a woman sitting inside it tried to run away after getting down. I ASI with the help of fellow employees, controlled the driver and his female



companion and asked the name of the driver. The driver gave his name and address as Harvinder Singh Son of Darshan Singh resident of Reond Kalan, Jiwan Nagar Police Station Boha, District Mansa, Punjab and the woman sitting in the front seat next to the driver in vehicle told her name as Charanjeet Kaur wife of Amrik Singh, son of Harbans Singh resident of Reond Kalan, District Mansa, Punjab. Chaudhariwas toll plaza employees, who used to come on the highway, were asked to take part in proceedings, on which Surendra Kumar, son of Late Shri Jaibir Singh Jangra r/o village Sarsana, sub tehsil Balsamand Mobile no. 98122-20439 Chaudhariwas toll plaza guard was included in the proceedings. Thereafter I, ASI, suspected that Harvinder Singh and Charanjeet Kaur above had any intoxicating substance Poppy, etc. in their vehicle, I first issued a notice to Harvinder Singh under Section 50 NDPS Act. That 'I give you notice under 50 NDPS ACT by informing that I am ASI Anoop Singh No. 895/Hisar, STF Unit, Hisar to Harvinder Singh son of Darshan Singhresident of Reond Kalan Jeevan Nagar police station Boha, District Mansa, Punjab under 50 NDPS ACT under notice that I have a suspicion of having some intoxicant Doda post etc. with you and in your vehicle number PB-15F-0958, Maruti Swift white colour. You and your vehicle have to be searched, you have to be searched. As per NDPS Act you have full legal right that you can call a Gazetted Officer or Duty Magistrate on the spot to search you and your vehicle as mentioned above or he can be called here to search your vehicle or you along with above mentioned vehicle Can be taken in front him. You give your answer in writing. Harvinder Singh, after hearing and understanding the notice very well, put his signature on the notice and the witness put his 2 signatures and in his reply, told orally, got written that I, Harvinder Singh son of Darshan Singh, resident of Reond Kalan, Jeevan Nagar Police Station Boha District Mansa, Punjab have heard and understood notice given by you under Section 50 NDPS Act. I want to call a gazetted officer on the spot and get my vehicle No. PB-15F- 0958 searched. Please call a gazetted officer to the spot to search me and my vehicle. I have written the reply notice to you orally, on which the reply



notice has been signed by Harvinder Singh above and the witness. After this, ASI issued notice u/s 50 NDPS Act to Charanjeet Kaur that I ASI Anoop Singh No. 895/Hisar, STF Unit, Hisar, give notice to you Charanjit Kaur wife of Amrik Singh son Harbans Singh resident of Reond Kalan, District Mansa Punjab that you and your vehicle No. PB- 15F-0958, Maruti Swift which is white in color, is suspected to contain some intoxicating substance poppy seeds (Doda Post) etc. You and your vehicle are to be searched as per the above rules. You have full legal right under the NDPS Act that you can call a Gazetted Officer or Duty Magistrate on the spot to search you and your vehicle, or, you can be searched along with the above vehicle can be taken before him for searching. You give your answer in writing. On the notice, Charanjit Kaur, the above has put his right thumb and the witness has signed. After thoroughly listening and understanding the notice given by me, she have written the reply to notice, in reply she told that that | Charanjit Kaur wife of Amrik Singh son of Harbans Singh resident of Reond Kalan, District Mansa, Punjab have heard and understood notice given by you under section 50 NDPS Act. I want a gazetted officer to be called on the spot to search me and our vehicle PB-15F-0958. Please call a gazetted officer on the spot to search my vehicle and mine. I have got written reply to notice to you in writing by speaking orally. On the reply notice, Charanjit Kaur has put her right thumb and the witness also out signatures. Regarding searching on the spot, Mr. Sachin Ahlawat, Agriculture Development Officer, Agricultural Development Officer, Maiyad District, Hisar, appointed by the District Deputy Commissioner Hisar, for the search in connection with the NDPS Act, informed on his personal mobile number 88140-05252 from my mobile number 94166- 28644 request was made. The time is around 6.24 AM, after which we had to wait, at 7:05 AM Mr. Sachin Ahlawat, Agriculture Development Officer, reached the spot and after introducing himself, he asked the ASI about the complete situation and after viewing the notice and reply notice, he took my Jamatalshi and leaving no article or money with me, directed me to search the arrested persons Harvinder Singh and Charanjeet



Kaur above named and vehicle no. PB-15F-0958 Maruti Swift car white color. I, ASI did search as per rules, in front of the Gazetted Officer, the vehicle driver above-mentioned Harvinder Singh was searched and no narcotic substance was found and as per the orders of the Gazetted Officer, Charanjeet Kaur, the above mentioned woman was searched through Constable Pooja Rani No. 18/Hisar women Police Station, Keeping the shame in mind being women, No intoxicants were recovered during the search. Thereafter on minutely searching of vehicle Maruti swift of white color as mentioned above PB 15F-0958, on back seat of car two plastic bags of black color found, on opening the mouth Doda post (Poppy husk / straw) was found in both. On weighing from computerized machine, the plastic bags recovered from the vehicle of the Harvinder Singh and Charanjit kaur, first plastic bag was 26 kag 100 grams and the another pastic bag was also found of 26 kg 100 grams, thus total 52 kg 200 gram Doda post (Poppy Husk) was recovered along with plastic bags. Two separate parcels of each recovered plastic bag were prepared and sealed with my seal VS/3 Gazetted Officer Mr. Sachin Ahlawat, Agriculture Development Officer, Maiyad, District Hisar stamped both the Palanda of Doda post with his seal OP/1 and the sample seal was prepared. Recovered Poppy Palanda, Plastic bag Sample, Seal Stamp VS/3 and OP/1. vehicle No. PB-15F-0958, Maruti Swift, White Color and Accused Harjinder Singh a mobile phone of Vivo brand of white color was recovered. In which Sim No. 82647-90082 was found. After making a separate parcel, I, ASI sealed with stamp VS/3. On the recovery memo, the accused Harvinder Singh has signed in Punjabi language and Charanjit Kaur put the thumb of his right hand and the witness has put signatures. The recovery of memo of doda post was verified by Gazetted Officer Mr. Sachin Ahlawat. After using and keeping my seal, I handed over the sample seal to ESI Baljeet Singh No. 671/Fatehabad, STF Hisar and Gazetted Officer Mr. Sachin Ahlawat, after using the above mentioned seal, kept it with him only. At the same time, report no. 4 dated 28.01.2023 filed by E/HC Vijay Kumar No. 591 Jind, has been received from Azad Nagar police station, Hisar. On



my inquiry, accused Harvinder Singh and Charanjit Kaur told about the recovered doda post that they have brought this Doda post from Nagaur, Rajasthan. Accused Harvinder Singh and Charanjit Kaur have committed the crime under section 15-C, 61/85 NDPS Act by keeping garbage weighing 52 kg and 200 grams along with weight of both the plastic bags, recovered in vehicle no. PB-15F-0958, against which a case should be registered. An information through ORP/HC Raghubir Singh No. 1645 is sent to police station of Hisar, the case number should be informed through the form and the special report of the case should be sent to the area magistrate and higher officials. Myself ASI is complainant Because the seized goods are the commercial quantity of the case. Therefore, as per the instructions of higher officials, another investigator, S.I. Rajesh Kumar No. 78/Fatehabad STF (H) Unit, Hisar is appointed IO. I am present at spot alongwith case property and the accused. Location:- NH-52 Near Chaudhariwas Toll Plaza, Hisar. SD/- ANUP SINGH ASI (ASI Anup Singh 895/ Hisar) STF (H) Unit Hisar. Date 28.06.2023 Time: 8:30 A.M.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the alleged recovery has been implanted upon him. As per the allegations, the petitioner along with co-accused was allegedly found having possession of 52.200 kilogram of poppy husk. He further submits that the petitioner is in custody since 28.6.2023 and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 25 Prosecution Witnesses, none has been examined so far.

**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 1 year, 3 months and 14 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 but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 08.12.2023 and charges stands framed on 20.12.2023.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 3 months and 14 days, 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 08.12.2023 and charges stands framed on 20.12.2023, out of 25 prosecution witnesses, none has been examined so far 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 would solve no purpose.

Reliance can 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 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 fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined 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 cases and involvement of the petitioner in other cases is concerned, 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

16.10.2024
anuradha

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