

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225

CRM-M-6957-2024
Date of decision: 15.02.2024

OM PARKASH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab

KULDEEP TIWARI. J.(Oral)

1. Through the instant (second) petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.269 dated 30.11.2022, under Section 18 of the NDPS Act, 1985, registered at Police Station City Moga, District Moga. The earlier bail application filed by the petitioner got dismissed as withdrawn, vide order dated 09.10.2023 (Annexure P-3), by the Co-ordinate Bench of this Court.

ALLEGATIONS AGAINST THE PETITIONER

2. The gist of the allegations, as culled out from the FIR, reads as under:-

"To the SHO PS City Moga, Jai Hind, Sir today I ASI Harjinder Singh no. 1163/M, SC Gurpreet Singh no. 1426/M, SC Gurjeet Singh no. 1424/M in govt. vehicle make Bolero Camper bearing registration no. PB-29H-8312 having printer already installed in it being driven by ASI Charanjit Singh no. 293/M had left for the area of PS City Moga from CIA Staff Moga camp at Mehna in relation to Patrolling and checking of suspicious persons. Meanwhile during patrolling when the police party was present at Kotakpura Bypass Moga in front of ROCK STAR Hotel then a secret informer came present and Informed to I ASI that Om Parkash son of Jodha Ram resident of Village Chittar Beara, District Jodhpur, Rajasthan is indulged in the business of selling Opium. He used to sell Opium in various Districts of Punjab after bringing the same from his area. Today also the said Om Parkash has come in city Moga for selling Opium after bringing the same in heavy quantity from Rajasthan. At this time he is standing at Goal Chowk, Focal Point Moga by taking along with him heavy quantity of Opium and waiting for his customers to supply opium to them. The particulars of said Om Parkash are: cropped hair and wearing blue colored Jacket having red and white strips and wearing Jeans Pant and he is carrying one back pack of black color on his shoulders. If raid be conducted immediately at him then he can apprehended and Opium in heavy quantity can be recovered from him. Information being credible and reliable, on which the act of said Om Parkash doing such type of business fulfils the ingredients of commission of offence under section 18-61-85 NDPS Act. On which ruqa is being sent to PS City Moga by hand S/C Gurjeet Singh no 1426/M for the registration of case against said Om Parkash son of Jodha Ram resident of Village Chittar Beara, District Jodhpur, Rajasthan. Kindly inform the FIR no. after registering the case and issue special reports. Kindly inform higher officials and PCR Moga and by complying the orders issued by Hon'ble Punjab and Haryana High Court Chandigarh Insp. Kikkar Singh incharge CIA Staff Moga was requested through mobile phone to send some other IO to the spot for conducting further investigation of the case. The said official replied that ASI Santhok Singh no. 271/M along with Laptop is coming

at this spot. Today in the revenue limits of: Kotakpura Bypass, in front of ROCK STAR Hotel Moga at 5:30 PM. sd/- Varinder Kumar ASI CIA Staff Moga dated 30.11.2022."

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) Despite the lapse of approximately 04 months, since the dismissal of the earlier regular bail petition, the trial has not proceeded further, as out of the total 15 prosecution witnesses cited in the final report, only 04 prosecution witnesses have been examined till date;

(iii) The alleged contraband, as recovered from the petitioner i.e. 2 kg 700 grams of opium, is marginally above the commercial quantity, as prescribed under the schedule, attached with the NDPS Act;

(iv) The petitioner has suffered incarceration of more than 01 year, and 02 months as on today.

(v) The petitioner is not involved in any other criminal case.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate *qua* the petitioner, as issued by the Superintendent of Central Jail, Faridkot. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 01 year, 02 months and 13 days, as on today. A perusal of the custody certificate further reveals that the petitioner is not involved in any other criminal case. Learned State counsel on instructions, imparted to him by the official respondent, submits that out of the total 15 prosecution witnesses cited in the final report, only 04 prosecution

witnesses have been examined till date.

ANALYSIS

5. *“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 Baliai”, 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.

6. 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.

7. 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 [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that 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.”

8. 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.

9. 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.

10. The reason for forming the above inference emanates from the factum that:- (i) The alleged contraband recovered from the petitioner i.e. 2 kg 700 grams of opium, is marginally above the commercial quantity, prescribed under the schedule, attached with the NDPS Act; (ii) The petitioner has suffered incarceration of 01 year, 02 months and 13 days, as on today; (iii) Out of the total 15 prosecution witnesses cited in the final report, only 04 prosecution witnesses have been examined till date. (iv) The petitioner is not involved in any other criminal case, (v) No fruitful purpose would be served by keeping the petitioner behind the bars, (vi) Trial is not likely to conclude anytime soon.

FINAL ORDER

11. 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.

12. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.
13. All pending application(s) stand disposed of accordingly.

15.02.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. :

Whether Reportable. :

Yes/No

Yes/No