

**CRM-M-8354-2024 (O&M)****1****IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****CRM-M-8354-2024 (O&M)****Date of decision : May 13, 2024**

Vipandeep Singh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Arshdeep Singh Brar, Advocate, for the petitioner
Mr. Akshay Kumar, AAG, Punjab

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner prays for grant of regular bail in case FIR No. 313 dated 30.11.2022, under Section 21 of NDPS Act, registered at Police Station Division No. 5, District Police Commissionerate Ludhiana.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR has been registered on a complaint made by ASI Amarjit Kumar. The relevant extract of the complaint reads as under:-

“On 30.11.2022, ASI Amarjit Kumar, was present along with other police officials at barricading held at Midha Chowk, Near Bus Stand, Ludhiana, then at around 7.30 PM, a secret informer came and informed that the petitioner is in the business of selling of heroin and is coming to Ludhiana city by bus to supply heroin to Kochhar market side and if there is strict checking of the suspicious man, the petitioner can be apprehended

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with a large amount of heroin. Believing the information, to be true and reliable, a ruqa was sent for registration of the case. Thereafter, the petitioner was rounded up and on his search, 280 grams of heroin was recovered from his possession.”

3. What transpired from the perusal of the FIR (*supra*) is that on the basis of secret information, the present petitioner was rounded up by the police, and thereupon, on his search, 280 grams of heroin was recovered, which led to registration of the instant FIR.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

4. In asking for the relief for grant of regular bail, learned counsel for the petitioner, *inter alia*, submits that since the recovery is effected from the pocket of the accused, therefore, compliance of Section 50 of the NDPS Act, is mandatory, whereas, the consent memo served upon the petitioner is defective and clearly in violation of the principles laid down by the Hon'ble Supreme Court and this Court. He further submits that the petitioner has suffered incarceration of approximately one and a half year, as on today, and out of 14 witnesses cited by the prosecution in the final report, only 6 have been examined.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. On the other hand, learned State counsel has opposed the grant of regular bail on the ground that the recovery which is effected from the present petitioner falls within the ambit of “*commercial quantity*”. He further submits that as per the Schedule attached with the NDPS Act, any quantity over and above 250 grams of heroin would fall within the ambit of “*commercial quantity*”, therefore, the rigor of Section 37 of the NDPS

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Act is duly applicable on the present petitioner, and until and unless, the condition as envisaged under Section 37 of the NDPS Act, is fulfilled, the petitioner cannot be enlarged on bail.

ANALYSIS

6. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

7. “*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.

8. 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.

9. In “***Gurbaksh Singh Sibbia v. State of Punjab***”, (1980) 2

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SCC 565 at 586-588, the purpose of granting bail is set out by the Hon'ble Supreme Court 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 Calcutta 476 (479, 480) 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 Allahabad 504 (SB) 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. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which 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.

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29. *In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "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, Vol. 8, page 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

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universal validity or as necessarily justifying the grant or refusal of bail.”

10. Also, in ***“Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh”, 1978 AIR (Supreme Court) 429***, the Hon’ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

“9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the



inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

12. *A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.*

13. *Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."*

11. The Hon'ble Supreme Court in "**Rabi Prakash Versus The**

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State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023, has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

"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."

REASONS

12. On the touchstone of the above discussion this Court finds that the the present petitioner deserves to be released on regular bail for the reason that; (i) the recovered quantity of contraband is marginally above the commercial quantity; (ii) present petitioner is not a previous convict and is not involved in any other criminal case; (iii) the petitioner has suffered incarceration of about 1 year 5 months and 11 days as on today, and the trial is yet to reach the half way, as out of total 14 witnesses cited by the prosecution in the final report, only 6 have been examined till date.

FINAL ORDER

13. Considering the fact that the petitioner has suffered sufficient incarceration of 01 year, 5 months and 11 days, as on today, therefore, the rigor of Section 37 of the NDPS Act, is diluted in view of **Rabi Parkash's** case (*supra*), coupled with the fact that the trial is yet to reach the half way

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as out of total 14 witnesses cited by the prosecution in the final report, only 6 have been examined till date, and further the petitioner is not involved in any other criminal case, this Court deems it fit, and 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.

14. 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.

May 13, 2024

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**(KULDEEP TIWARI)
JUDGE**

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No