

2024:PHHC:086485



218-2

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-7789-2024
DATE OF DECISION: 11.07.2024

LICHMAN RAM **...PETITIONER**
Versus

STATE OF HARYANA **... RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.N. Ganeriwala, Advocate and
Mr. Kanish Ganeriwala, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 435, dated 01.12.2023, under Sections 15/27-A and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Pehowa, District Kurukshetra.

2. Learned counsel for the petitioner submits that the petitioner is only an employee at dhaba from where 60 kgs. Chooria post and 25 kg. of doda was alleged to be purchased from the owner of dhaba located on Delhi-Maharashtra Highway, Mandsaur, Madhya Pradesh. The name of the present petitioner has been nominated on the basis of disclosure statement of Gursewak Singh @ Gabi and Narsi Singh @ Kaka. He has relied upon the judgment of Supreme Court passed in '*Surinder Kumar Khanna vs. Intelligence Officer*', *DRI2018, SCC OnLine SC 757*, where the Apex Court held that one co-accused



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cannot be convicted upon the disclosure statement made by another co-accused. He further relied upon the judgment passed by Supreme Court in '*Tofan Singh vs. State of Tamil Nadu*' decided on 29.10.2020 wherein it was held that the statement of an accused recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 7 months. He seeks dismissal of the petition stating that the recovery effected is commercial in nature. He is not in a position to controvert that the petitioner was an employee at dhaba owned by one Ram Raghu, as well as the facts that co-accused Pratap Singh and Gursewak Singh @ Gabi have been granted concession of bail.

4. Having heard learned counsel for the parties, and keeping in view the facts that nothing is to be recovered from the petitioner who has undergone 7 months of incarceration, he is not involved in any other case and no overt act has been attributed to him nor any evidence has been produced to connect the petitioner in the alleged incidence of selling the contraband, the Court deems it fit to allow the instant petition.

5. Another aspect which cannot be lost sight of is that in the instant FIR, investigation is complete, challan stands presented to the Court and charges are yet to be framed and in as much as 23 prosecution



witnesses have been listed, examination of whom will take sufficiently long time and on that account the petitioner cannot be permitted to be detained behind the bars for an indefinite period.

6. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. 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; wherein it was held as under:

*“10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the



undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

7. Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in "***Abdul Rehman Antulay and others v. R.S. Nayak and***



another”, 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

- I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

8. In view of the aforesaid discussions made hereinabove, the petitioners is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

10. Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

11.07.2024
anuradha

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