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2024.PHHC.118814



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

**CRM-9771-2024 in/and
CRM-M-11166-2024
Date of Decision : 10.09.2024**

JAGBIR

.....Applicant/Petitioner

VERSUS

THE STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. M.N.Jogira Advocate with
Mr. Ravi Kumar, Advocate,
for the applicant/petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

CRM-9771-2024

1. Leave granted.

CRM-M-11166-2024

2. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.28, dated 05.02.2023 (Annexure P-1), under Sections 20(b)(ii)(c)/61/85 of the NDPS Act, registered at Police Station Charkhi Dadri, District Charkhi Dadri.

ALLEGATIONS AGAINST THE PETITIONER

2. The petitioner was arrested on 05.02.2023 in the instant FIR,

and the allegation against him is that, he carrying 1.250 kg.of *charas*, which admittedly falls under the commercial quantity.

3. The gist of the allegations as culled from the FIR reads as under:-

“To, SHO, Police Station Sadar Dadri, Jai Hind, Today on 05.02.2023, I, Virender Singh SI 387/HSNCB alongwith EHC Narender 52/Narnaul, Constable Narender 2666/Gurugram with vehicle bearing Reg No HR 05GV 1692 driver EASI Kuldeep 1079/BWN, present at village Charkhi Bus stand where a secret information is received through secret informer that a person named Kaliya wearing cream color pant blue color upper with black color topi on head belonging to village Paintawas Kalan District Charkhi Dadri is standing with intoxicant substance Charas, near Lord Shiva Temple outside the village Paintawas Kalan District Charkhi Dadri. If immediate raid is conducted he can be caught with the contraband. the information is reliable, a notice u/s 42 of NDPS is prepared for intimating senior officials of Police Station Sadar Dadri, and also to be entered in the roznamcha is sent through driver EASI Kuldeep 1079/BWN, thereafter I alongwith my team members reached near Lord Shiva Temple outside the village Paintawas Kalan District Charkhi Dadri, where after seeing police party a Young Person resembling with the disclosed identity by the secret informer runs towards foresty (Bani), with the help of my team members he was controlled and after inquiry he disclosed his name as Jagbir@ Kaliya s/o sh Omprakash R/O village Paintawas Kalan District Charkhi Dadri. After giving him my introduction on the suspicion of intoxicant substance a Notice u/s 50 of NDPS Act is given to him i.e You are Jagbir@ Kaliya s/o sh Omprakash R/O village Paintawas Kalan District Charkhi Dadri is under suspicion of possessing intoxicant substance for which I have to search you and you have a statutory right to be searched before any Magistrate or Gazetted officer by calling him at the spot or by taking you before the Magistrate or Gazetted officer for that you have to give your consent in reply to the notice, upon which Mushami Jagbir @ Kaliya replied that I am uneducated and I can only sign where it is needed and also told me that prepare my consenting reply by your own, he gives his consent for search to conducted before Magistrate or Gazetted officer by calling him at the spot. Upon which a consenting reply is prepared and signed by Jagbir @ Kaliya alongwith witnesses. Thereafter receiving reply from the Jagbir @ Kaliya I contacted to Civil Gazetted Officer Shri Surajbhan Singh SDO LWS Dadri through my mobile no 9812454251 on his mobile no 9467074282 and informed him about the whole situation and requested him to come on at the place of occurrence. At sharp 6 pm the Civil Gazetted Officer Shri Surajbhan Singh SDO LWS Dadri reached at the place of occurrence and all the information is given to him. Thereafter Civil Gazetted Officer Shri Surajbhan Singh SDO LWS Dadri searched me as per rules/provisions and nothing intoxicating/objectionable thing is recovered from me, for that a recovery memo is prepared and then Shri Surajbhan Singh SDO LWS Dadri gives me instruction to search the mushami Jagbir @ Kaliya, search of Jagbir @ Kaliya is conducted as per order given to me by Shri Surajbhan Singh SDO LWS Dadri. There is lot of movements of the

people at the spot, many of them is informed about the situation but all of them refused to become witnesses by expressing there genuine issues. Search of Jagbir @ Kaliya is conducted by me and during the search a green color polythene is recovered in the hand of Jagbir @ Kaliya which was opened and checked by me and intoxicating substance is recovered which I believed to be CHARAS. The recovered intoxicating substance Charas is weighed by electronic kanta, the net quantity of the recovered intoxicating substance Charas is 1.250 kg, with polythene its weight is 1.272 kg. The recovered substance is seized and separate Parcel is prepared on which 3 seals of monogram VS is affixed on the parcel (Palnda) and then after preparing sample seal it was handed over to Constable Narender 2666/Gurugram and also the Civil Gazetted Officer Shri Surajbhan Singh SDO LWS Dadri affixed his seal of monogram DS and sample seal was also prepared and the seal is kept with itself by the Civil Gazetted Officer Shri Surajbhan Singh SDO LWS Dadri. The recovered intoxicating substance Charas is seized and recovery memo is prepared and seized substance is taken into the possession of police. Recovery memo is attested by the Shri Surajbhan Singh SDO LWS Dadri and he left the place of occurrence at sharp 6.40 pm for some official works. Mushami Jagbir @ Kaliya by keeping 1.250 kg Charas has committed offence u/s 20 B (II)(C)/61/85 OF NDPS Act. During this time EASI Kuldeep 1079/BWN reaches at the spot who was earlier went to enter ruqqa(notice u/s 42) in the Police Station Sadar Dadri and the nakal report is handover to me by him and tehrir prepared is also sent through him to the Police Station Sadar Dadri and after registering inform me the FIR No and also by preparing special report inform the senior officials and send any competent Investigating Officer at the place of occurrence for further investigation. I am busy at the spot. Special report of the case will be sent to senior officials as well as to the Illaqa Magistrate through Email and for Investigating the case ASI Rakesh HSNCB Unit Rohtak is informed telephonically to reach at the place of occurrence. NOTE present case is registered in the presence of HC Sandeep 570/Dadri....”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIOER

4. Learned counsel for the petitioner, in asking for the relief of regular bail, submits that the petitioner has clean antecedent, and he has been falsely implicated in the present FIR.
5. She further submits that the statutory compliance of Sections 42 and 50 of the NDPS Act, has not been made, therefore, the entire recovery is vitiated.
6. She mainly placed reliance upon the days of incarceration, i.e. more than 1 year and 7 months, as today, and submits that the trial is

not progressing in its right directions, rather is progressing at a snails pace, therefore, the petitioner may be enlarged on regular bail.

7. She finally submits that the recovery effected from the present petitioner is marginally above the commercial quantity.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. *Per contra*, the learned State counsel vociferously opposed the asked for relief, and submits that since the recovery effected from the present petitioner falls within the ambit of commercial quantity, therefore, the rigor of Section 37 NDPS Act, comes into the way of petitioner to seek the relief of regular bail.

9. Today, he has filed a status report, dated 07.09.2024, by way of an affidavit of Sh. Dheeraj Kumar, DSP (HQ), Charkhi Dadri, and also a custody certificate qua the present petitioner, which are ordered to be taken on record, with copies thereof already supplied to learned counsel for the petitioner.

10. A perusal of the same reveals that the petitioner has suffered incarceration of 01 year, 07 months and 02 days as on today and he is not involved in any other criminal case.

11. He further submits that out of the total 18 witnesses as cited by the prosecution, only one witness has been examined so far.

ANALYSIS

12. 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.

13. *“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.

14. 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.

15. In **“Gurbaksh Singh Sibbia v. State of Punjab”, (1980) 2 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 universal validity or as necessarily justifying the grant or refusal of bail."

16. 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.”

17. The Hon'ble Supreme Court in ***“Rabi Prakash Versus The 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.”

18. In the recent judgment passed by the **Hon'ble Supreme Court in Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another, 2024 (3) RCR (Criminal), 494**, it has been specifically held that the right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of article 21. The relevant extract of the same reads as under:-

18.Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental

neglect; may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howso- ever stringent the penal law may be.

19. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

20. The reason for forming the above inference emanates from the *factum* that:- (i) the custody certificate (*supra*) reveals that the petitioner has undergone actual custody of 01 year 07 months and 02 days as on today; (ii) the petitioner has clean antecedent; (iii) the recovery of contraband effected from the present petitioner is marginally above the commercial quantity; (iv) there is no likelihood of the trial concluding anytime soon, as the trial is moving at snail's pace, only 01 prosecution witness has been examined out of total 18 prosecution witnesses; (v) no fruitful purpose would be served by keeping the petitioner behind the bars; (vi) all the issues which have been raised by learned counsel for the petitioner, are required to be adjudicated by the learned trial court concerned, at an appropriate stage of the trial,

therefore, this Court refrains to make any observation on those issues.

FINAL ORDER

21. Considering the hereinabove made discussion, 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.

22. 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.

23. 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.

24. All pending application(s) stand **disposed** of accordingly.

(KULDEEP TIWARI)
JUDGE

September 10, 2024
dharamvir

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No