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

CRM-M-12616-2024

Date of Decision: August 13, 2024

AJAY

....Petitioner(s)

VERSUS**STATE OF PUNJAB**

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Mehak Sawhney, Advocate,
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)**1. Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.211, dated 21.09.2019, under Sections 22 of the NDPS Act, 1985 (Section 29 of the NDPS Act added later on) registered at Police Station Shahkot, Jalandhar Rural.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“SHO police Station Shahkot, Jai Hind Today myself ASI alongwith PHG Balbir Singh 28247 were present at Chowki, where we received a phone from ASI Balwinder Singh no.322/Jal, PP Talwandi Sangera. He gave a



information that he alongwith other police officials was holding a police picket at T point Tut Sher Singh in the area of Sadiqpur. Then one young Hindu Gentleman was coming on foot from the side of village Tut Sher Singh. Who on seeing the Police party got nervous and immediately turned back. That young man took out a transparent polythene from underneath of the clothes and threw it on the side of road. On suspicion he was apprehended with the help of other police officials and on request for further investigation, myself ASI along with PHG Balbir Singh 28247 came at spot. Where ASI Balwinder Singh no.322 alongwith constable Roop Singh no.1708, PHG Sukhwinder Singh 28201 were already present at the spot. ASI Balwinder Singh no.322 apprised me about all the facts. Myself SI disclosed my identity to the apprehended young man and apprised him of the fact that myself SI Bhupinder Singh is deputed at Chowki Talwandi Sangera police Station Shahkot. Further I enquired about the name and identity of the young man apprehended by the policy party. Who replied that his name is Ajay son of Jaswinder Singh resident of Mohalla Jalla Chowki Ward no.4, Police Station Makhu, District Ferozepur. On which myself SI told him that there is suspicion that some incriminating material is in the transparent polythene thrown by him. For which the search of the said polythene is required. But you have legal right that you can get your search conducted before the Gazatted officer or Magistrate, who can be called at spot. After taking some time, he replied that he has faith in me and I can conduct his search of the transparent polythene thrown by him. On which his consent memo was prepared, he appended his signatures in English on the consent memo, and witnesses also appended their



witness on it. Before conducting his search efforts were made to join a witness from the public, but everyone showed his inability to join as public witness, therefore no public witness could be joined. Thereafter myself SI picked up the transparent polythene from the side of the road and checked the same from which loose intoxicant tablets total 2100 were recovered. Which were put into plastic polythene and converted into bulk parcel after putting it into the plastic container. The bulk parcel was sealed with my seal alphabet BS. Form M 29, sample seal were also prepared at the spot. The bulk parcel and form M-29 were taken into policy custody vide separate recovery memo. After used the seal was handed over to ASI Balwinder Singh 322. Accused Ajay has committed an offence under Section 22/61/85 of NDPS Act for illegally keeping in his possession 2100 intoxicant tablets. After writing ruqa, for registration of FIR, same is sent to police station through PHG Sukhwinder Singh 28201. After registration of FIR, FIR number be intimated. Police control room be informed. Special reports be issued to Senior Officers. Myself SI along with other officials is busy with further investigation at the spot in the area of T point Tut Sher Singh village Sadigpur, at 6.30 PM Sd/Bhupinder Singh.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that 2100 intoxicant tablets have been recovered, but the petitioner is alleged to have been arrested merely on the basis of suspicion who was seen by the police party carrying the polythene bag. It is only after the search conducted that



polythene bag was found to allegedly have 2100 tablets of intoxicants. He further alleges that recovery of contraband has been planted upon the petitioner. She would further argue that petitioner is behind the bars for the last more than 4 years and 10 months and he is not involved in any other case of NDPS Act whatsoever.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He would argue that the commercial quantity of contraband namely Tramadol Hydrochloride salt was found in the tablets which was measured to be 351 mg. as per the FSL report dated 16.01.2020 and for the 2100 tablets, total weight comes to be of 737.1 grams which would fall within commercial quantity of contraband and on that account presses for the dismissal of the instant petition.

4. Analysis

Be that as it may, having regard to the contentions made on behalf of the counsel for the parties and considering the period of incarceration as suffered by the petitioner so far, as per the custody certificate it is evident to be 04 years 10 months and 15 days; added to the fact that challan stands presented on 17.02.2020 and charges having been framed on 16.07.2022 also out of total 10 prosecution witnesses, only 05 witnesses have been examined till date, this Court does not find any reason to further detain the petitioner behind bars. As far as involvement of petitioner in other cases are concerned though the same are not pertaining to



offences under NDPS Act but are under Sections 379/201 IPC and in one of those he has been acquitted in FIR No.103 dated 11.08.2019 under Section 379/201 IPC registered at Police Station GRP. JAL, FIR No. 101 dated 10.08.2019 under Sections 379/201 IPC registered at Police Station GRP. JAL. and in FIR No.229 dated 15.12.2018 under Sections 379/411 IPC registered at Police Station GRP. JAL. Also in the FIR No.213 dated 24.09.2019 under Sections 457/380 IPC registered at Police Station Shahkot, the petitioner has already completed his sentence. The said facts are sufficient to confer that the petitioner is not a habitual offender and even otherwise he is acquitted in two other cases whereas in another case trial is still pending, he therefore, cannot be denied the concession of regular bail.

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 basic and 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 discussions hereinabove, the petitioner 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.

In the afore-said terms, the present petition is hereby allowed.

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

(SANDEEP MOUDGIL)
JUDGE

13.08.2024
Sangeeta

Whether reasoned/speaking: *Yes/No*
Whether reportable: *Yes/No*