



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

206

CRM-M-13072-2024

DATE OF DECISION: 22.08.2024

LAKHWINDER SINGH ALIAS RINKU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M.K. Dhot, Advocate for the petitioner(s).

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

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SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.86 dated 15.07.2023, under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the NDPS added later on) registered at Police Station Amargarh, District Malerkotla.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

*‘Copy of Ruqa. SHO PS Amargarh, Jai Hind, Today I SI alognwith ASI Harjeet Singh no. 496/SNG, HC Abdul Shamim no. 1539/SNG, SC Swaranjeet Singh no. 1719/SNG, C Tejveer Singh no. 1992/SNG and L/C Rimpi no. 1414/SNG was in checking out suspected person, suspected vehicles and in this regard was on Govt. Vehicle bearing PB-65-BA-8115, which was being driven by*



*SC Nirbhay Singh 990/SNG, and in this regard was present near Drain Bridge on Mahoran Nabha Malerkotla Road alongwith laptop, inverter, printer etc., then the time was about 02:30 PM and secret informer came and informed that Soni Singh son of AmarJeet Singh and his mother Amar Kaur @ Amro w/o Amarjeet Singh R/o Baghria and Lakhwinder Singh @ Rinku son of Surinder Singh R/o Batha all three are habitual to sold the intoxicant tablets after taking the same from outside. Today also Soni Singh and his mother Amar Kaur @ Amro and Lakhwinder Singh @ Rinku above in car no. DL-1C-AA-9123 make Dezire Color White after taking the intoxicant tablets going towards Village Baghria on Cannal Side bay village Bathan to Maharana to sold the same their customers. If immediately in a preplanned manner barricading the done here and after checking above persons be nabbed, then from them in a huge quantity intoxicant tablets can be recovered. Information true and reliable. Then I SI informed about the information to the companion official and after barricading started checking then at about 03:00 PM one car color white upon the cannal side was seen to be coming upon main road from village Salar. I give a sign to stop the car, then the driver of the car after seeing the barricading tried to run the car then HC Abdul Shamim no. 1539/SNG by moving barricade ahead to stopped the car. In a car two persons and one lady was sitting. Both persons and lady after opening the doors of the car tried to run. Who I ASI alongwith the help of companion police officials nabbed and enquired their name and address, then driver of the car disclosed his name Soni Singh son of Late Amarjeet Singh R/o Village Baghria, P.S Amargarh, District Malerkotla, and the person who was sitting with him disclosed his name Lakhwinder Singh @ Rinku son of Surinder Singh R/o Village Batha, P.S Amargarh, District Malerkotla and the lady which was on the back seat of the car disclosed her name Amar Kaur @ Amro W/o Late Amarjeet Singh R/o Baghria, P.S Amargarh, District Malerkotla. Then I SI checked the car then from the back seat of the car one plastic polythene color white was lying and the plastic polythene was also*



*... tied out of which the strips of tablets were clearly visible. The same was taken out of the car and after untied the plastic bag checked the strips of tablets after taken the same out, and upon counting there are total 120 strips and in each strip there are total 10/10, total 1200 tablets. All strips having Marka NRX Tramadol Prolonged-release Tablets IP 100mg CELCIDALE batch no. CDA 22003 MFG. DATE NOV/2022 EXPIRY DATE OCT/2024 was recovered. Then I SI to the coming Passer byes tried to join in investigation but all by disclosing their problem and nobody joined the investigation. Then I SI prepared one parcel of intoxicant tablets after taking the same in one white color cloth packet. Then the parcel having intoxicant tablets sealed by I SI with my Seal SS. Sample of seal prepared separately. Seal after use handed over to ASI Harjeet Singh no. 496/SNG. Then car was checked and in front and in back of the car number plats DL-IC-AA-9123 are affixed. And the color is white make Dezire. Upon checking the car non document regarding ownership was found. Then I SI sealed parcel of intoxicant tablets, sample of seal and car no. above without document taken into police possession by preparing a memo. Memo was signed by witnesses. Because of this Soni Singh, Lakhwinder Singh @ Rinku and Amar Kaur above by taken into possession intoxicant tablets and to sold the further committed the offence U/S 22, 61, 85 of NDPS ACT, Due to which I SI sent a ruqa for registration of case under section 22, 61, 85, of NDPS ACT against Soni Singh son of Late Amarjeet Singh R/o Baghria, P.S Amargarh, District malerkotla, Lakhwinder Singh @ Rinku son of Surinder R/o village Bathan P.S Amargarh, District Malerkotla, and Amar Kaur @ Amro W/o Late Amarjeet Singh R/o Baghria P.S Amargarh, District Malerkotla after taking printout by typing in laptop through C Tejveer Singh no. 1992/SNG at PS Amargarh. After registration of case the case filed be informed. Special report be issued. Control room Malerkotla be informed. I am busy at the spot in investigation. Attested by SD/ SI Surjeet Singh 968/PTL P.S Amargarh Dated 15.07.2023, Today in the jurisdiction of Mahoran Cannal Time about 05:00 PM, after*



*receiving ruqa FIR no. Above as per offences above against Soni Singh son of late Amarjeet Singh R/o Baghria, P.S Amargarh, District Malerkotla, Lakhwinder Singh @ Rinku son of Surinder Singh R/o P.S Amargarh, District Malerkotla, and Amar kaur Amro, W/o Late Amarjet Singh R/o Baghria, P.S Amargarh, District Malerkotla entered in registered record completed. In charge control in going to be informed. Copy of FIR as a special report through PHG Sukhwinder Singh 4800 sent before Ilaqa magistrate and officials. Coming C Tejveer Singh 1992/SNG alongwith original Ruqa and original case file sent before SI Surjeet Singh 968/PPL for investigation.'*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the car from which the alleged recovery has been effected does not belong to the present petitioner. He submits that there is no evidence connecting the petitioner with the alleged incident and rather the petitioner was a passenger sitting on the adjoining seat of the driver, wherein the recovery was effected from the back seat of the car. He has further argued that no recovery has been effected from the petitioner and the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender. The contention raised is that the presence of the petitioner at the alleged incident is also disputed and for that purpose call details and CCTV footage of that spot has been preserved as was ordered by the Trial Court vide order dated 10.08.2023. It is his further contention that there is delay in depositing the sample in the FSL Lab as recovery was effected on 15.07.2023 whereas the sample was deposited



on 21.07.2023. He further asserts that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 17 Prosecution Witnesses none has been examined so far.

**On behalf of the State**

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year, 1 month and 2 days.

Learned State Counsel on instructions from the ASI Sukhwinder Singh opposes the prayer for grant of regular bail on the grounds that there are serious allegations against the petitioner but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 19.12.2023 and charges stands framed on 04.04.2024.

**4. Analysis**

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 1 month and 2 days and he is not a habitual offender and no recovery has been effected from his conscious possession. As regards the delay in depositing the sample in FSL Lab, this Court is of the view that this fact is to be examined by the Trial Court at the time of evidence. As per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 19.12.2023 and charges stands framed on



04.04.2024 out of 17 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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.



5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)  
JUDGE

22.08.2024  
anuradha

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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |