

2024:PHHC:086831



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

CRM-M-13033-2024
Reserved on: 10.07.2024
Pronounced on: 12.07.2024

ARWINDER SINGH SIDHU

.... PETITIONER

Vs.

STATE OF PUNJAB AND ANOTHER

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. N.S. Dadwal, Advocate, for the petitioner.

Mr. Eklavya Darshi, DAG, Punjab.

Mr. Rajesh Sethi, Sr. Standing Counsel with
Mr. Arun Biriwal, Advocate, for respondent No.2.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for his release on regular bail in case F No.DR/LDZU/855/INT-02/2021 under Sections 8, 20, 27-A, 29 and 60 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Division No.5, Ludhiana against the petitioners and others.

2.1 This is the second petition for this purpose. The earlier petition bearing CRM-M-1040-2024 was dismissed as withdrawn vide order dated 07.03.2024 (*Annexure P3*) with liberty to file fresh petition after impleading the complainant of the case i.e. DRI as a party to the petition.

2.2. Status report has been filed by Sh. Sahil Razmee, Intelligence Officer, DRI (ZU), Ludhiana.

3.1 As per allegations, intelligence report was received by DRI unit

of Ludhiana to the effect that cannabis (ganja) is stored in a godown premises situated at Village Mangli Nichi, Sahnewal, District Ludhiana. Said report was reduced into writing and submitted to the superior officers. The godown premises were searched by the officers of DRI Unit on 08.09.2021. On knocking the main door, one person, who introduced himself as Shivam Singh, came out and informed about the purpose of visit with a search warrant. After following the due procedure, search was conducted. It was informed by Shivam Singh that he had taken the godown on rent from one Jiya Lal. In the premises, three more persons namely Mintu Singh, Arwinder Singh Sidhu (*petitioner herein*) and Manoj were found and on search of the godown, 52 brown colour packets containing *Ganja (Cannabis)* were found, each packet weighing approximately 08 kgs of *ganja*. The total quantity of *ganja* was found to be 428.13 kg. Shivam Singh disclosed that he had procured the said contra band from Berhampur, Odisha.

3.2 On 09.09.2021, during recording the statement of Shivam Singh, someone was regularly trying to contact him on his mobile. On being asked, Shivam Singh disclosed that Ranjeet Rai and Bidesh Rai were contacting him for taking the delivery of the consignment for selling the seized *Ganja (Cannabis)* in the local market and settling the accounts. On the asking of DRI officers to communicate with these persons Ranjeet Rai and Bidesh Rai, Shivam Singh called them at the gate of Gujrawalan Khalsa College, Rani Jhansi Road, Civil Lines, Ludhiana. Two persons reached at that place and on identification of Shivam Singh, they were apprehended. They disclosed their name as Ranjeet Rai and Bidesh Rai and they admitted their role in the illicit trafficking of *Ganja*. All of them were arrested.

3.3 Necessary investigation was conducted and then complaint against the accused including the petitioner was filed before the Special Court on 07.03.2022 to prosecute them under Sections 8, 20, 27-A, 29 and 60 of the NDPS Act.

4. It is submitted by ld. counsel that the petitioner has been falsely implicated; that he is neither the tenant nor the owner of the hall/godown from where the alleged recovery was effected; that petitioner is the first offender and has never been involved in any such case; that he is in custody for the last more than 2 years and 10 months and that trial is not proceeding further and so, no purpose shall be served by keeping him detained. Prayer is made for grant of regular bail.

5. Strongly opposing the bail petition, ld. Senior standing counsel for respondent No.2-complainant pointed out that recovery of 428.13 kg of *ganja*, which is worth more than ₹85.62 lakh in the market, was recovered from the conscious possession of the petitioner along with others, who were found present in the godown from where the recovery was effected. It is argued that recovered quantity of contraband is more than 21 times than the threshold of 20 kg, from which the commercial category for ganja starts and that Section 37 of the NDPS Act bars grant of bail in such like cases. Ld. senior standing counsel further placed on record a common order dated 24.07.2023 passed by a Coordinate Bench of this Court, whereby bail petitions of co-accused Bidesh Rai, Ranjeet Rai and Monoj [*CRM-M-23281-2022*; *CRM-M-23282-2022* and *CRM-M-28130-2022* respectively] were rejected. Even the second bail petition of co-accused Bidesh Rai has been rejected by the Coordinate Bench on 19.04.2024 in CRM-M-11970-2024. With these submissions, prayer is made for rejecting the bail petition.

6. I have considered submissions of both the sides and have appraised the record.

7. No doubt that petitioner has been apprehended from the spot along with three others and huge quantity of contraband has been allegedly recovered from his conscious possession, but at the same time, Court cannot ignore the fact that petitioner is in custody since 08.09.2021 i.e. for the last more than 2 years and 10 months. It has been informed by ld. senior standing counsel that out of 16 witnesses cited by the complainant, statement of only one witness has been concluded so far. Ld. senior standing counsel has also placed on record copies of the various zimini orders passed by the trial Court, which would reveal that charge was framed way back on 18.07.2022 and recording of lengthy statement of only one PW1 namely Sahil Razmee, Intelligence Officer, took as many as six effective dates. In these circumstances, it is quite reasonable to assume that conclusion of the trial is likely to take long time.

8. Further, it has not been disputed by ld. senior standing counsel for the complainant that petitioner is the first offender and has not been found to be involved in any other case.

9. This Court is conscious of the fact that Section 37 of the NDPS Act bars grant of bail in such like cases, unless certain specific stringent conditions are fulfilled but rigors of Section 37 of the NDPS is required to be balanced with Article 21 of the Constitution of India, which provides fundamental right to life and liberty. It has been held by Hon'ble Supreme Court in **Hussainara Khatoon v. Home Secy., State of Bihar reported in (1980) 1 SCC 81** that speedy and expeditious trial, is an integral and essential

part of the fundamental right to life and liberty enshrined in Article 21. Thus, right to speedy trial forms a facet of Article 21.

10. Recently in ***Criminal Appeal No 2787 of 2024 (Arising out of SLP (Crl) No 3809 of 204)*** titled as ***Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another*** decided on 03.07.2024, Hon'ble Supreme court considered an appeal against an order of the High Court declining bail in a case pertaining to Unlawful Activities (Prevention) Act, 1967. It was found that appellant was in jail as an under trial prisoner for the past 4 years; that trial Court had not been able to even frame the charge and that the prosecution intended to examine not less than 80 witnesses. In these facts and circumstances, Hon'ble Supreme Court observed as under: -

“9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in **Gudikanti Narasimhulu & 3 Crl.A.2787/2024 Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240**. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal.

Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox] :

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

11. The same principle has been reiterated by this Court in **Gurbaksh Singh Sibba v. State of Punjab reported in (1980) 2 SCC 565** 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.

12. Long back, in **Hussainara Khatoon v. Home Secy., State of Bihar reported in (1980) 1 SCC 81**, this court had declared that the right to speedy trial of offenders facing criminal charges is “implicit in the broad sweep and content of

Article 21 as interpreted by this Court”. Remarking that a valid procedure under Article 21 is one which contains a procedure that is “reasonable, fair and just” it was held that:

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

13. The aforesaid observations have resonated, time and again, in several judgments, such as **Kadra Pahadiya & Ors. v. State of Bihar reported in (1981) 3 SCC 671** and **Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225**. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot dis-entitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

14. In **Mohd Muslim @ Hussain v. State (NCT of Delhi) reported in 2023 INSC 311**, this Court observed as under:

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were

lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were under-trials.

22. *The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in **A Convict Prisoner v. State reported in 1993 Cri LJ 3242**, as “a radical transformation” whereby the prisoner:*

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer's ‘The Prison community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”*

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as “the 2008 Act”) mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in **Union of India v. K.A. Najeer reported in (2021) 3 SCC 713**] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are

expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

17. In the recent decision, **Satender Kumar Antil v. Central Bureau of Investigation** reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

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, 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.”

11. In the present case also, as noted earlier, the petitioner is in custody for the last more than 2 years 10 month. Only one out of 16 witnesses of the complainant – DRI have been examined so far. Even recording of that one witness has been taken quite long time and so, trial is likely to take long time to conclude. Petitioner is the first offender. As observed by Hon’ble Supreme Court in *Javed Gulam Nabi Shaikh’s case (supra)*, 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

12. Having regard to all the above facts and circumstances and also the observation of Hon’ble Supreme Court in *Javed Gulam Nabi Shaikh (supra)* but without commenting anything further on merits of the case, this Court is of the view that no purpose shall be served by keeping the petitioner detained. As such, present petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court concerned, on usual terms and conditions.

Pending application(s), if any, also stand disposed of.

12.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No