



CRM-M-15407-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

CRM-M-15407-2024
Date of Decision : 07.11.2024

Kasim Ali ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Abhishek Chaa, Advocate and
Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition filed under Section 439 of Cr.P.C., the petitioner prays for grant of regular bail in case FIR No.307 dated 04.07.2022 (Annexure P-1), under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sohana, District SAS Nagar, Mohali, Punjab.

2. The case as set up by the prosecution is that a naka was laid near Pearl Society, village Sukhgarh, and at about 7.00 p.m., two persons having their hair cut were seen coming on the motorcycle, from the side of village Sukhgarh, who were signaled to stop, upon which the person, who was sitting as a pillion rider, was having a polythene bag in his hands, and he has thrown the aforesaid polythene bag on the garbage heap, and thereafter, they tried to run away, by turning their motorcycle. However, both the persons fell down

on the road, due to the imbalance of the motorcycle, and thereafter, they were



apprehended by the police party, and later on, they disclosed their names as Rohit, who was driving the motorcycle, and the present petitioner, who was riding as pillion. On search of the polythene bag, which was thrown on the heap of garbage, 12 injections of Buprenorphine, 12 injections of Avil and 40 grams of intoxicant powder, were recovered from the polythene bag. After completion of the investigation, final report was filed. 40 grams of intoxicant powder was later on found to be Tramadol Hydrochloride.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. On asking for the relief (supra), learned counsel for the petitioner submits that Tramadol Hydrochloride, which is 40 grams recovered in the instant case, falls under the ambit of non-commercial quantity. The recovery of 12 injections of Avil, does not cover the definition of contraband, as prescribed under the NDPS Act, and the rest 12 injections of Buprenorphine, were found to be containing 24 mg of Buprenorphine, and the commercial quantity as prescribed under the schedule is 20 mg, therefore, the recovery effected is marginally above the commercial quantity. He further submits though the petitioner is involved in three other cases, but none of them is registered under the NDPS Act, rather, all are petty offences. He finally submits that the petitioner has suffered incarceration of more than 02 years and 04 months, as on date, and on asking for the relief (supra), he submits that till date, the trial in the instant case has not even reached the half way mark.

4. In addition, learned counsel for the petitioner submits that the co-accused Rohit, has already been extended the relief of regular bail, by coordinate Bench of this Court, vide order dated 19.01.2024, passed in CRM-M-4556-2023, and therefore, the present petitioner also deserves the

***SUBMISSIONS OF THE LEARNED STATE COUNSEL***

5. On the other hand, learned State counsel on instructions imparted to him by SI Barma Singh, has opposed the grant of regular bail to the petitioner. He has also placed on record the custody certificate dated 06.11.2024, qua the petitioner, in the Court today. The same is taken on record. The custody certificate reflects that the petitioner has suffered incarceration of more than 02 years and 04 months, as on today, and the petitioner is involved in three other cases, but none of them is registered under the NDPS Act. Further, the learned State counsel informs this Court that in the instant case, the prosecution has cited total 15 witnesses, out of which, 06 witnesses have been examined, as on date, and the next date before the learned trial Court concerned, fixed is 04.12.2024.

ANALYSIS

6. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties concerned, and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

7. *“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.



8. 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.

9. 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."

10. 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.”

11. The Hon'ble Supreme Court in **“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023**, has also



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.”

12. 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, howsoever stringent the penal law may be.”

DECISION

13. This Court, has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and the rival submissions made by the learned counsel for the parties concerned, and is of the considered opinion that the instant petition is amenable to be allowed, and the legal obstruction of Section 37 of the NDPS Act, has been diverted in view of the long incarceration, as the petitioner has suffered incarceration of more than 02 years and 04 months, as on today.

14. Since the petitioner is not involved in any other case under the NDPS Act, and the trial has still not reached the half way mark, this Court is of the view that the present petitioner deserves to be released on regular bail, as the further custody of the petitioner is not warranted in the instant case. Accordingly, the instant petition is **allowed**.

15. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.
16. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)

JUDGE

November 07, 2024

Manpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No