

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

210

CRM-M-15063-2024
Date of decision: 29.05.2024

SHAMSHER SINGH @ SHERAPetitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. G.B. Gilhotra, Advocate &
Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

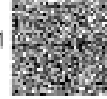
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.08 dated 01.02.2024, under Sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Dhilwan, District Kapurthala.

ALLEGATIONS AGAINST THE PETITIONER

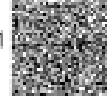
2. The gist of the allegations as culled out from the FIR, reads as under:-

"The SHO, P.S. Dhilwan, Jai Hind. Today, myself ASI alongwith ASI Murta Singh 218/KPU, PHG Nasib Singh No.28437, PHG Lakhwinder Pal Singh 28316 riding on private vehicle in connection with patrolling duty and in search of bad persons reached at Main Highway Hightech Barricade Dhilawan where ASI Gurdeep Singh 994/KPU, ASI Darshan Singh No. 100/KPU, Sr/CT Kulwaran Singh



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623/KPU who were already present at the Hightech Barricade, Dhilwan. Myself ASI was conducting checking of vehicles that at about 11:15 PM, from the side of Toll Plaza Amritsar, one white coloured car No.PB02-DU-5128 mark Swift came there in which one clean-head youngman was riding was signaled to stop and asked for routine checking that you may come out of the car and get the 'digi' of your car checked, then the car driver after opening the door of the car while alighting from the car thrown one polythene packet near the door and pushed the same below the car, then myself ASI on the basis of suspicious asked him that what you are hiding below the car, then the car driver told in frightened language, it contains heroin, kindly forgive me. Then myself ASI got himself introduced to him and asked his name/address who disclosed his name as Shamsher Singh @ Shera s/o Jaimal Singh, R/o Jheeta, P.S. Chattiwind, District Amritsar. Then myself ASI before checking the packet tried to join some public witness, then everybody expressed their helplessness. Then myself ASI asked Shamsher Singh @ Shera above to get his thrown packet checked, then Shamsher Singh @ Shera himself picked up the packet with his hands and shown after opening it said that it contained heroin. Then myself ASI weighed the recovered heroin which was found to be 50 grams. That 50 grams recovered heroin alongwith polythene packet was put in a plastic box and prepared one parcel which was sealed with seal 'KS' and one separate sample seal was prepared separately. After use the seal was handed over to ASI Gurdeep Singh 994/KPU. Case property of 50 grams heroin and car No.PB02-DU-5126 mark Swift white colour was taken in police custody vide recovery memo as proof. Shamsher Singh @ Shera s/o Jaimal Singh, R/o Jheeta, P.S. Chattiwind, District Amritsar by keeping in his possession committed offence u/s 21-61-85 NDPS Act. Ruqa was written against him and for registration of case, the same is being sent by hand through PHG Lakhwinder Pal Singh No.28316 to the police station. After registration of case, FIR No. may be informed. Information may be sent to the Control Room on wireless.



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Special reports may be issued and sent to the Senior Officers. Myself ASI alongwith fellow officials got busy in the investigation on the spot. Latitude of this 31498646 and Longitude 328782 today in the area of Hightech Barricade Dhilwan AT: 12-05 AM. Sd/- Kuldeep Singh ASI, P.S. Dhilwan, Kapurthala, dated 01.02.2024.

Today, Police Station:- On receipt of above ruqa at police station, case under above offence got registered. Original ruqa and copy of FIR sent by hand through PHG official to the ASI on the spot. Record of the police station got completed. Information to the Control Room is being sent by wireless. Special reports are prepared and being sent by hand through PHG Gurmit Singh 15624 to the Senior Officers and Area Magistrate. Record of the police station is being completed. Completion of rapat No.03 dated 01.02.2024."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) The recovery effected from the present petitioner is of 50 grams of heroin, which falls within the ambit of non-commercial quantity (less than 250 grams);

(ii) The prosecution while showing the alleged recovery, has not complied with the statutory requirement, as envisaged under the NDPS Act, therefore, the whole recovery which is effected from the present petitioner is doubtful;

(iii) Though the petitioner is stated to be involved in one more case of NDPS Act, however, in that case he is on bail;

(iv) Petitioner has suffered incarceration of 03 months, and 26 days, as on today.

SUBMISSIONS OF THE LEARNED STATE COUNSEL



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4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Superintendent of Central Jail, Kapurthala. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 03 months and 26 days, as on today. A perusal of the custody certificate further reveals that the petitioner is involved in two other criminal cases, however, he is on bail in both the cases. Learned State counsel on instructions, imparted to him by ASI Paramjeet Kumar, submits that the challan in the instant matter had already been filed on 30.03.2024, and the charges are yet to be framed. Learned State counsel further submits that out of the total 11 prosecution witnesses cited in the final report, none has been examined till date.

ANALYSIS

5. 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.

6. “*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.

7. 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.

8. 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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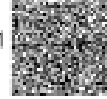
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29. In *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern 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



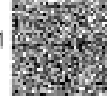
as necessarily justifying the grant or refusal of bail.”

9. 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 bifocal 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



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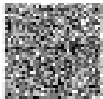
be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from 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.”

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

11. The reason for forming the above inference emanates from the factum that:- (i) The recovery which is effected from the present petitioner falls within the ambit of non-commercial quantity; (ii) The petitioner has suffered incarceration of 03 months and 26 days, as on today; (iii) Out of the total 11 prosecution witnesses cited in the final report, none has been examined till date (iv) No fruitful purpose would be served by keeping the petitioner behind the bars, (v) Trial is not likely to conclude anytime soon.

FINAL ORDER

12. 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.

13. 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.
14. All pending application(s) stand disposed of accordingly.

29.05.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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