



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15703-2024
Date of Decision: August 06, 2024

JUBER HASAN KHANPetitioner(s)

VERSUS

STATE OF HARYANARespondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

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.221, dated 09.08.2023, under Sections 21(c), 29, 61, 85 of the NDPS Act, 1985, registered at Police Station Udyog Vihar, District Gurugram.

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

“To The Station House Officer, Police Station Udyog Vihar, Gurugram, Jai Hind. Today I, ASI Sandeep 04/DDR HSNCB Unit Gurugram along with my colleague HC Ajay 1120/PWL in car No. HR-05-GV-5869, the driver of which is Constable Vigesh 3416/FBD am present near Sushant Lok, Gurugram. From DHL Courier Company, Plot No.269, Udyog Vihar, Phase-2,



Gurugram, Virender Singh Security Investigation Officer informed that during the x-ray, there is suspicion of having intoxicated substance in a box. Upon this information, a notice under Section 42 of NDPS Act was prepared and sent to the Police Station Udyog Vihar, Gurugram through Constable Vigesh 3416/FBD for information and the registration of the case and I, ASI along with my colleagues have reached D.H.L. courier company, Plot No.269, Udyog Vihar, Phase-2, Gurugram. There Sh. Virender Singh, Security Investigation Officer met. I am waiting for the gazette officer. At 12.30 PM, Constable Vigesh 3416/FBD, after getting the Rapat registered in the roznamcha in Police Station Udyog Vihar, came to the site along with gazette officer Sh. Satish Kumar, ETO O/o DETC (ST) Gurugram North. They were told about the facts. The gazette officer Sh. Satish Kumar, ETO O/o DETC (ST) Gurugram North searched me. From my search, no intoxicated substance was found. The memo of my search was prepared, on which the witnesses put their respective signatures and I asked Virender Singh to produce that box, which is suspected to have intoxicated substance. Sh. Virender produced that box before us. On this, Ship from Shashank Srivastav 151, Shriji Nagar, Durgapur, Jaipur 302018 Indian and To Aviv Bekar, EL-AL Street 2 Ramat Gan Gouse-2, 5241332, Ramat Gan, Israel has been written. The same was opened and checked, then 01 bed sheet of colour yellow, 02 pillow cover of colour yellow and 01 wrist band (rakhi with rudraks in middle) were found. The bed sheet lying in the packet was opened and checked and one polythene was found therein. The polythene was cut and checked and it contained intoxicated substance Amphetamine. The Amphetamine was taken out from the bedsheet and Amphetamine was



weighed with the government digital weighing machine. The Amphetamine with plastic bag was found to be 512 grams. The photography of site of incident was made. The said recovered intoxicated substance Amphetamine was put in a plastic box and put the box in a clothed parcel and other articles rakhi, 02 illow covers and 01 bed sheet were put a polythene bag and prepared a parcel. The gazette officer Sh. Satish Kumar, ETO, O/o DETC (ST) Gurugram North stamped both the parcels with the stamp MS and I stamped the both the parcels with the stamp mark SM and one stamp was put on the sample stamp. Sample stamp was separately prepared. The gazetted officer Sh. Satish Kumar, ETO, O/o DETC (ST) Gurugram, North kept the stamp after its use and I handed over the stamp to HC Ajay 1120/PWL. At the same time, Sh. Virender Singh, Security Investigation Officer produced an invoice No.01 dated 2323.08.08, one WPX, Photo copy of adhaar card Shashank Srivastava son of Pardeep Srivastava, resident of 151, Shriji Nagar, Durgapur, Jaipur, Rajasthan 302018. In the invoice ship from Shashank Srivastav 151, Shriji Nagar, Durgapur, Jaipur 302018 Indian and to Aviv Bekar, EL-AL, street 2 Ramat Gan Gouse- 2, 5241332, Ramat Gan, Israel has been written. The above parcel of intoxicated substance Amphetamine, sample seal, parcel of other articles duly stamped and the 04 documents produced by Virender Singh was taken into police possession through a memo of possession. All the parcels, sample seal and memo of possession were verified by the gazetted officer Sh. Satish Kumar, ETO, O/o DETC (ST) Gurugram North and the witnesses put their respective signatures. Shashank Srivastava and Aviv Bekar by hiding intoxicated substance Amphetamine 512 grams in a polythene in the bed sheet and sending it to Israel and



ordering and by giving to DHL Express Courier Company, have committed an offence under Section 21-C of NDPS Act. Thus, the report has been written on the personal laptop and after taking its print out, the same is being sent to the police station Udyog Vihar through HC Ajay 1120/PWL for the registration of the case. After the registration of the FIR, its number be intimated and special reports be sent to the Senior Officers as per rules and the investigating officer be sent to the site of incident for further investigation of the case. I, ASI along with my colleagues and case property as present at the site of incident, Place DHL Company, Plot No.269, Udyog Vihar, Phase-02, Lat-28.50717, LOG-77.08484. Sandeep 04/DDR, HSNCB Unit, Gurugram dated 09.08.2023 under section 21 C-61-85 NDPS Act, 1985. Police Station Udyog Vihar has been registered and the computerized copies of the FIR have been prepared on the computer. The special report of the FIR has been prepared and will be sent to the Illaqa Magistrate and senior officers through E-mail. The further investigation of the case will be conducted by ASI Bijender 31/GGM. ASI Bijender Singh No.31/GGM has been informed on telephone to reach at the site. HC Ajay No.1120/PWL has been given a copy of the FIR and the original report and sent to the site of incident. This FIR is being registered in the presence of ASI Sandeep No.475.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant FIR. He has been nominated as an accused on the basis of disclosure statement of one co-accused and nothing



has been recovered from his possession. He submits that as per Section 27 of Indian Evidence Act, disclosure statement is a weak piece of evidence. The petitioner is in custody since 01.11.2023. Learned counsel for the petitioner would further submit that the petitioner has received an award from the President of India as President's Scout.

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 seeks dismissal of the instant petition on the ground that the petitioner is also involved in one another case of criminal nature, meaning thereby, he is a habitual offender.

4. **Analysis**

From the above, it can be culled out that the role attributed to the petitioner is that on 09.08.2023 an information was received from DHL Courier company regarding Virender Singh, Security Investigating Officer, the apprehension of presence of psychotropic substance in one box. On checking, narcotic substance i.e. Amphetamine of 52 grams was found. Thereafter, first information report was registered and the petitioner Juber Hassan Khan was arrested on 01.11.2023, however, the said fact has been controverted by the learned counsel for the petitioner stating that nothing has been recovered from his conscious possession, who is behind the bars for the last 08 months and 29 days. The co-accused, namely, Pulkit Tomar and Ram Lal have also been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 10.04.2024 passed in CRM-



M-11681-2024 and CRM-M-6885-2024. In the present case, challan stands presented on 16.01.2024, charges have been framed on 02.03.2024 and out of total 28 prosecution witnesses, none has been examined till date, which is suffice enough for this Court to infer that the conclusion of trial will take considerable time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be made 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 made 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

06.08.2024
Sangeeta

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