

2024:PHHC:014865

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M-16479-2023(O&M)
Date of Decision : February 02, 2024

CHARLES AMOAKO ALIAS DAVID ALIAS MICHAEL
.....Petitioner

VERSUS

STATE OF HARYANA
.....Respondent

CRM-M-18984-2023(O&M)

SUKHDEV SINGH
.....Petitioner

VERSUS

STATE OF HARYANA
.....Respondent

CRM-M-39833-2023(O&M)

ABOU TRAORE
.....Petitioner

VERSUS

STATE OF HARYANA
.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Garima Sharma, Advocate,
for the petitioners in CRM-M-16479-2023 &
CRM-M-39833-2023

Mr. Rakesh Bakshi, Advocate
for the petitioner in CRM-M-18984-2023.

Mr.Abhinash Jain, DAG, Haryana

KULDEEP TIWARI. J.(Oral)

1. All three petitions are interconnected, arising out of the same FIR, therefore, being amenable for common decision, same are taken up together.

2. Through the instant petitions, the petitioners craves for indulgence of this Court for them being enlarged on regular bail, in case FIR No. 288, dated 16.09.2022, under Sections 21/29/61/85 of the NDPS Act, registered at Police Station Barara, District Ambala.

ALLEGATIONS AGAINST THE PETITIONERS

3. In the instant case, the prosecution agency was set into motion on receipt of a secret information on 16.09.2022 and thereupon, the law enforcement agency had set up a *nakka* and arrested a person Sukhdev Singh alias Sukha (petitioner in CRM-M-18984-2023) and after complying with the provisions of NDPS Act, he was duly searched and from his personal possession a recovery of 263 grams of heroin, including the weight of polythene was effected (the total weight minus polythene comes to Rs.260 grams).

4. Further, during the course of investigation on dated 17.09.2023, accused-petitioner-Sukhdev Singh suffered a disclosure statement, to the effect that he used to buy intoxicant substances like heroin, smack, etc. from Chandpuri Colony, Delhi and Pratap Nagar Colony, Rajasthan at cheap prices and then he used to sells those at a higher price to the drug addicts. He further named one Soheb, the person

who sold him the intoxicant substance. However, the petitioner-Sukhdev Singh subsequently resiled from his earlier statement, and suffered new disclosure statement on dated 19.09.2022, disclosing the name of Charles alias Michael (petitioner in CRM-M16479-2023) as one of the persons who supplied him heroin about 270 grams at Rs.2,70,000/-.

5. In furtherance of the disclosure statement, and investigation made by the petitioner-Sukhdev Singh, on dated 01.10.2022, petitioner-Charles Amoako alias David alias Michael, was arrested, however, no recovery was effected from him.

6. Thereafter, one Tanko Mohammad was also involved in the instant FIR, on the disclosure statement of petitioner-Charles Amoako alias David, and one Abu (non-petitioner/accused).

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE
PETITIONER**

7. Learned counsel for the petitioners in order to give strength to their arguments for grant of regular bail to the petitioner, submit that the alleged recovery of heroin is marginally above the commercial quantity, i.e 260 grams whereas, the commercial quantity as prescribed under the schedule of NDPS Act, is 250 grams.

8. Learned counsel for the petitioners-Charles and Abou Traore submits that they have been nominated only on the disclosure statement of petitioner-Sukhdev Singh, and except the disclosure statement there is nothing on record to connect them with the alleged crime.

9. Learned counsel for the petitioners further submits that one of the co-accused-Tanko Mohammad Ebube Nawankwo alias Advin, who was also implicated in the instant FIR on the basis of disclosure statement of petitioner-Sukhdev, has already been extended the benefit of regular bail by a co-ordinate Bench of this Court vide order dated 21.07.2023 in CRM-M-18575-2023.

10. He further submits that all the petitioner have already suffered incarceration of about more than one year.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

11. *Per contra*, the learned State counsel vociferously opposed the asked for relief on the ground that the petitioners-Charles Amoako alias David alias Michael and Abou Traore, are foreign national and there is all possibility that they may flee from the clutches of law in case they are released from the custody.

12. So far as petitioner-Sukhdev Singh is concerned, learned State counsel submits that he is a habitual offender and he is involved in 10 more cases of similar nature, therefore, he is not entitled for regular bail.

13. Learned State counsel has placed on record custody certificates *qua* the petitioners, which is taken on record, and perusal of the same reveals that all petitioners have suffered incarceration of more than one year.

14. Faced with above difficulty, learned counsel for the

petitioner-Sukhdev Singh submits that though petitioner-Sukhdev Singh is involved in 9 more cases, however, in four cases he has been acquitted and in four cases cases he is on bail, and only in one case he is in custody

15. Except one matter, all other eight matters do not belong to the offence punishable under NDPS Act, and so far as one case registered under NDPS Act, which is registered against him is concerned, in that case he is already on bail.

16. Learned State counsel, further, on instructions, informs this Court that challan in the instant FIR has been filed way back on 18.11.2022, and thereupon, charges have been framed on 19.04.2023, and out of the total 19 prosecution witnesses, examination-in-chief of only one witnesses has been recorded, with cross-examination deferred.

ANALYSIS

17. *“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.

18. 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.

19. In “*Nikesh Tarachand Shah V. Union of India*”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out 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 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 All 504 : 33 Cri LJ 94] 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. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will 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.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor*

[(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“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, Volume 8, p. 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.”

20. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

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

for being allowed.

FINAL ORDER

22. Considering the fact that the alleged recovery of contraband from main accused-Sukhdev Singh is of 260 grams, which is marginally above the commercial quantity, and, petitioners Charles Amaoka and Abu Traore were nominated on a disclosure statement made by petitioner-Sukhdev Singh, and, one co-accused Tanko Mohammad Ebube Nawankwo who is on similar footing, has already been granted relief of regular by co-ordinate Bench of this Court, and, petitioners-Charles Amoaka and Abou Trore have suffered incarceration of 01 years 03 months and 29 days, whereas petitioner-Sukhdev Singh suffered incarceration of 01 year, 04 months and 13 days, as on today, the trial is at initial stage, as out of the total 19 prosecution witnesses only 01 has been partly examined so far, this Court deems it appropriate to grant the concession of regular bail to the petitioners, during the pendency of trial. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are 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.

23. However, it is clarified that if in future, the petitioners are found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate

application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

24. Petitioners-Charles Amoako and Abou Traore, who are foreign nationals, are directed to submit their passports before the learned trial Court concerned forthwith, if already not deposited, and to furnish an undertaking to the effect that they will not leave the country without prior permission of the trial Court concerned.

25. All pending application(s), if any, also stands disposed of.

February 02, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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