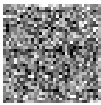


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2024:PHHC:105688



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16340-2024 (O&M)
DECIDED ON: 14.08.2024

JASWINDER KAUR
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. V.K. Pujara, Advocate for
Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

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.84, dated 31.05.2023, under Section 304 IPC, registered at Police Station Sidhwan Bet, District Ludhiana Rural.

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

“Statement of Rano Bai wife of Late Hartej Singh son of Narain Singh resident of Chak Kanian Kalan, PS Dharmkot, District Moga, Age 46 Years, Mob. No. 83606-72831. I hereby state that I am resident of above mentioned address and I do labour work. I have 05

children. Out of them 03 are daughters and my all 03 daughters are married. My elder son is Jaswinder Singh @ Bittu age about 24 years and younger son is Gurpreet Singh age about 20 years. Marriage of my son Jaswinder Singh was solemnized about 05 years ago with Swarna Rani daughter of Lal Singh son of Kartar Singh resident of Bagge Ke, District Fazilka. My son Jaswinder Singh @ Bittu was addicted to drugs. My son Jaswinder Singh @ Bittu used to buy Heroin from Sona Singh son of Dayal Singh son of Uttam Singh, Jaswinder Kaur wife of Amarjit Singh @ Ambu, Charanjit Kaur wife of Dayal Singh, Jyoti Kaur wife of Sona Singh residents of Sherewal and their son-in-law Jagtar Singh @ Suba resident of Sainchan, Near Sultanpur, Current R/o Sherewal quite often. We had asked them many times not to sell Heroin to my son and we had also asked our son Jaswinder Singh not to consume drugs. Yesterday dt. 30.05.2023 at time about 7:00 PM my son Jaswinder Singh Bittu had gone on his motorcycle No. PB29-D-5148 Bajaj Platina to buy Heroin from above mentioned persons. At time about 9:00 PM we received information that my son Jaswinder Singh is lying at Village Sherewal near the motor of Kulwant Singh under the influence of drugs and his motorcycle is standing at the bank of river. When I alongwith respectable persons went to the spot then I saw that my son Jaswinder Singh @ Bittu was conscious and struggling for life. When I asked him about this then he said to me that, "I had gone to buy Heroin from Sona Singh etc. but instead of Heroin they have given me some chemical drug and after consuming it my health deteoriated." After saying this he became unconscious. We were taking him to Civil Hospital Jagraon in unconscious state but my son died before reaching hospital. We placed his dead body at Mortuary,

Civil Hospital Jagraon and being late night we could not come at police station and went to our house. Today along with my brother-in-law (jeth) Malkit Singh son of Narain Singh resident of Chak Kanian Kalan were going to police station and you met at Bus Stand Tihara. Statement recorded to you, heard, is correct. Necessary legal action be taken against above mentioned Sona Singh etc. Sd/- RTI/- Rano Bai. Statement correct, Sd/- LTI/-Malkit Singh. Attested, Sd/- Rajvarinderpal Singh AS Incharge PP Gidderwindi PS Sidhwan Bet Date 31.05.2023.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that a compromise has been entered into by the parties to the present petition i.e. petitioner and the complainant. He further contends that the co-accused of the petitioner have been granted the concession of anticipatory bail by this Court vide orders dated 31.07.2024 for Sona Singh, dated 08.05.2024 for Jagtar Singh @ Subba and dated 08.05.2024 for Charanjit Kaur @ Charan Kaur passed in CRM-M-30385-2024, CRM-M-16529-2024 and CRM-M-3117-2024 respectively, copies of the same have been produced before this Court by learned counsel for the petitioner.

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 son of the complainant namely Jaswinder Singh @ Bittu was addicted to heroin and used to buy the same from the present petitioner and his co-accused but

instead of giving heroin to him they supplied some other chemical drug, post consumption of which the son of the complainant died.

4. **Analysis**

Be that as it may, considering the custody period i.e. 03 months and 13 days for which the petitioner has suffered incarceration; co-accused of the petitioner have been granted the concession of anticipatory bail vide orders dated 31.07.2024 for Sona Singh, dated 08.05.2024 for Jagtar Singh @ Subba and dated 08.05.2024 for Charanjit Kaur @ Charan Kaur passed in CRM-M-30385-2024, CRM-M-16529-2024 and CRM-M-3117-2024 respectively; both the parties have entered into compromise in addition to the fact that challan stands presented on 18.03.2024 and charges having been framed on 29.05.2024 also out of total 15 prosecution witnesses, none has been examined till date, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be placed 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.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on her 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.

14.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No