

**CRM-M-17544-2024****1****IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****CRM-M-17544-2024****Date of decision : November 06, 2024**

Jahangeer Ahmad

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Lavanya Gupta, 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. 111 dated 19.8.2023, under Sections 15-C of the NDPS Act, 1985, registered at Police Station Adampur, District Jalandhar.

2. The allegations in the instant FIR, are that on 19.8.2023, ASI Ravinder Singh got recovered 80 kgs of poppy husk from the possession of the present petitioner Jahangeer Ahmad and his co-accused Mohammad Imran Khan alias Sonu. The relevant extract of the FIR reads as under:-

“On 19.8.2023, the police party headed by ASI Ravinder Singh was riding in a private vehicle patrolling in the area of Khurdpur bridge when the informant came forward and informed that a truck number JK06-A-538 was parked for a long time on the back



CRM-M-17544-2024

2

side of the nearby ice factory in Khurdpur and he has suspicion that it is carrying narcotics and if a raid is conducted they can be apprehended now. When the police party reached where the truck number JK06-A-5038 was parked, then the persons started to slip on the spot while seeing the police party, then ASI Ravinder Singh with the help of fellow employees caught the two persons and asked for their names. One person told his name as Muhammad Imran Khan alias Sonu son of Ghulam Muhammad resident of Chinta police station Badarba Dstrict Doda (Jammu Kashmir) and the other person told his name as Jahangir Ahmed son of Qutbadin resident of Kursu Khareti Bulandpur police station Asar District Doda (Jammu Kashmir) who was identified by ASI Ravinder Singh. After completing the formalities, the truck was searched, from where 80 kgs of poppy husk, was recovered and thereafter, the instant FIR was registered.”

3. Learned counsel for the petitioner in asking for the relief (supra) submits that the petitioner has suffered incarceration of 01 year, 02 months and 13 days as on today, and he is a man of clean antecedents. He further submits that the necessary statutory compliance has not been made in the instant FIR, while making the alleged recovery. He finally submits that despite the lapse of more than one year, the prosecution has not been able to examine any witness. He further placed reliance upon judgment of the Hon'ble Supreme Court passed in “***Rabi Prakash Versus The State of Odisha***”, ***Special Leave to Appeal (Criminal) No.4169 of 2023***.

4. The learned State counsel opposed the grant of regular bail to the petitioner and submits that the recovery allegedly effected from the possession of the present petitioner does fall under the ambits of “*commercial quantity*”, and therefore, rigour of Section 37 of the NDPS



CRM-M-17544-2024

3

Act would come into the picture, and the burden lies upon the petitioner to illustrate that he has been falsely implicated in the instant case. He further submits that the contents of recovery, as effected from the present petitioner, were found to be of poppy husk. He also placed on record the custody certificate qua the petitioner, today in Court, the same is taken on record, which reflects that the petitioner has suffered incarceration of 01 year, 02 months and 13 days as on today. The custody certificate further reflects that the petitioner is not involved in any other case. He also informed this Court, after having instructions from the quarter concerned, that no prosecution witness has been examined so far, whereas a total 14 witnesses have been cited by the prosecution, in its final report.

5. This Court has considered the rival submissions made by the learned counsel for the parties concerned, and has gone through the entire case file.

6. 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.

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



CRM-M-17544-2024

4

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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XX

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 discussed the effect of Section 37 of the NDPS Act, in such like cases of long 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**



CRM-M-17544-2024

10

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



CRM-M-17544-2024

11

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.”

13. Considering the fact that the petitioner has suffered the incarceration of 01 year, 02 months and 13 days as on today, and he is not involved in any other case, and in view of the ratio laid down in **Rabi Prakash** (*supra*), and considering the fact that since no prosecution witness has been examined till date, the trial will take long time to conclude, this Court deems it appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

14. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

November 06, 2024

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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No