

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210 CRM-M-23145-2024
DATE OF DECISION: 12.08.2024

SHUBHAM ALIAS TIGGA ALIAS SUBHAM
...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Sharda, Advocate and
Mr. Anupam Mathur, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.135 dated 23.12.2022, under Sections 22/61/85 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Urban Estate, Patiala.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

‘To the SHO Urban Estate, Jai Hind, today I SI, alongwith ASI Sudhagar Singh 229, Head Constable Sohan Singh no. 3360, Constable Jobanpreet Singh no. 646 were present in govt vehicle PB11CF3803 carrying laptop and printer which was driven by ASI Kuldeep Singh no. 979 were present in Sunny Enclave Colony near Railway Line near DMW road for checking of suspicious and dubious persons and were checking the vehicles. At about 5:10 pm one young boy was seen coming



from the railway line side. After alighting from one stationery train and was going towards Sunny Enclave colony who upon noticing police party got confused and threw a black coloured pastic bag which he was carrying in his left hand in the deep bushes by the side of railway lines and starting running towards Sunny Enclave. On this I ASI alongwith help of other companion apprehended that young boy who on being asked disclosed his name as Shubham @Tigga s/o Late Rajpal r/o Near Khera, Saifabadi Gate, Patiala. I SI got picked the black coloured plastic bag which the young boy had thrown from him out of which brown colour capsules were recovered and on each capsule Proxywel Spas was written in English. On being asked he told that the same were intoxicating capsules which were counted by I SI along with ASI Sudagar Singh and Head Constable Sohan Singh. The same were counted as 2485 intoxicating capsules which were put in a plastic bag and sample was prepared. I SI put my seal JR on this sample and sample seal was prepared separately. Seal after use was handed over to ASI Sudagar Singh. Recovered intoxicating sample along with sample seal were taken in possession vide separate memo and were taken into possession. The ruqqa was signed by ASI Sudagar and Head Constable Sohan Singh. Shubham @ Tigga had kept in his possession large quantity of intoxicating capsules and has thus committed offence u/s 21/61/85 of NDPS Act. Therefore, ruqqa is being sent against Shubham @Tigga s/o Late Rajpal r/o Near Khera, Saifabadi Gate, Patiala for registration of FIR through Constable Jobanpreet Singh no. 646 and after registering case the number be informed. Senior officers be informed through control room and special reports be got prepared. I ASI alongwith companion police officials and accused is present at the spot for investigation. LAT no. 30.3515141 and long number 76,4126238. In the area of Sunny



*Enclave DMW road Patiala at 6:50 pm signed Janak Raj SI,
Police Station Urban estate Patiala dated 23.12.2022.'*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and no recovery of any intoxicating substance whatsoever has been effected from the petitioner on making his personal search. He further submits that the petitioner is in custody for last 1 year and 7 months and 16 days and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 9 Prosecution Witnesses, none has been examined so far.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 1 year, 7 months and 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petition is involved in one more FIR i.e. FIR No. 35 dated 17.03.2020 registered under Sections 380/454/411 IPC, 1860 but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 17.05.2023 and charges stands framed on 17.11.2023.



4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 1 year, 7 months and 16 days, though the petitioner is involved in one more FIR No.35 but he is on bail in that FIR and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 17.05.2023 and charges stands framed on 17.11.2023, out of 9 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 guaranteed 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 case and involvement of the petitioner in other case 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his/her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

12.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>