

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217 CRM-M-23760-2024
DATE OF DECISION: 13.08.2024

SANDEEP SINGH ALIAS SONI ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S Sekhon, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

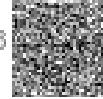
SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

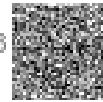
The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.23 dated 08.03.2024, under Sections 21/22/29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bhadson District Patiala.

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

‘Contents: At this time it is registered that from ASI Parwinder Singh 262 has been received in the PS by hand PHG Jasvir Khan for the registration of case against Sandeep Singh @ Soni son of Kangan Singh resident of Rohti Chhanna PS Sadar Nabha. The contents of ruqa are: "To the SHO PS Bhadson, Jai Hind, Sir today I ASI along with HC Gurpreet Singh 577/PTL, HC Sewak Singh 1291/PTL, PHG Jasvir Khan 18084 in private vehicle were present at Grain Market,



Bhadson, PS Bhadson in relation to patrolling and checking of suspicious persons, meanwhile one cropped hair person was standing under the shed constructed in the Grain Market, who was wearing green/white coloured shirt and black color pant. When the police party stopped on the way leading towards village Nanowal and alighted from the vehicle to conduct the checking of the vehicles passing through. Meanwhile it was time around 05:15 PM, the said person on seeing the police party got perplexed and immediately started moving towards Bhadson Colony in fast manner after throwing away some illegal object from her hands. On which I ASI along with fellow policemen sat in our vehicle and chased and apprehended the said person and asked about his name and address. On which he disclosed his name as Sandeep Singh @ Soni son of Kangan Singh resident of Rohti Chhanna PS Sadar Nabha. Thereafter I ASI told that I am ASI Parwinder Singh am posted at PS Bhadson. My name plate is affixed with my uniform. Thereafter I ASI along with fellow policemen went near the illegal substance thrown away by the said Sandeep Singh and checked the transparent polythene bag from which white colour intoxicant substance is visible, the transparent polythene bag was checked by opening its mouth. On which Chitta/Heroin was recovered. Thereafter I ASI took out the computer scale from my electronic kit and weighed the recovered Chitta/Heroin, on which it became 20 grams Chitta/Heroin. Thereafter the recovered heroin along with transparent polythene was put into a plastic box and by putting it into a cloth bag, its parcel was prepared. The parcel was duly sealed with my seal bearing PS. Sample seal was prepared separately. After use the seal was handed over to HC Gurpreet Singh 577. The parcel of cloth bag duly sealed containing recovered heroin was taken into police possession vide memo of recovery. Thereafter report under section 42 of NDPS ACT was prepared separately by I ASI. The said Sandeep Singh by



keeping in his possession Heroin/Chitta in this manner has committed offence under section 21/61/85 NDPS Act. Therefore I am sending the ruqa to PS by hand PHG Jasvir Khan 18064 after getting it typed for the registration of case against said Sandeep Singh Soni son of Kangan Singh resident of Rohti Chhanna PS Sadar Nabha under the said offence. Kindly inform the file number after registering the case and inform higher officials and I/C Control Room Patiala through Email. I ASI along with fellow policemen am busy in investigation at the spot. SD/- Parwinder Singh ASI, PS Bhadson, Dated 08.03.2021. In the revenue limits of: Grain Market, Bhadson, time 7:00 PM.'

3. **Contentions**

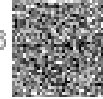
On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and allegedly 20 grams of Heroin has been recovered from him, which is non-commercial in nature. He submits that the petitioner is in custody for last 5 months and 1 day. He submits that 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 8 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 5 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the



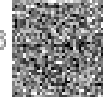
petitioner is involved in one more FIR but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 06.05.2024 and charges are yet to be framed.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 5 months and 1 day and the recovered contraband is non-commercial in nature 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 06.05.2024 and charges are yet to be framed, out of 8 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:-

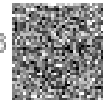
“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences 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

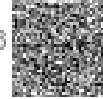


Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

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

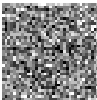
6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. 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 fundamental 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, he is on bail in that case and 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

13.08.2024
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No