

CRM-M-27336-20241

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)CRM-M-27336-2024
Date of Decision : 27.08.2024

Sukhjinder Singh @ Sukh...Petitioner

Versus

State of Punjab...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Himanshu Chhabra, Advocate for
Ms. Ramandeep Kaur Suhag, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.77, dated 27.04.2023 under Sections 22, 61 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Dharamkot, District Moga, Punjab.

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

*‘FIR NO.077 dated 27.04.2023, U/s 22 NDPS Act, P.S. Dharamkot, Distt. Moga (Pb.).
Officer Incharge. P.S. Dharamkot, Fateh. Today I ASI alongwith ASI Jaswinder Singh No.804/Moga HC Darshan Singh 1059/Moga, PHG Gurbakhsh Singh No.11321 on Government Vehicle Bollero No. PB-29H- 4498 which was being driven by Gubakhsh Sing PHG were going from Kishanpura Kalan to Village Cremation Ground, when the police party was patrolling and was going to Sua-2 Indergarh from intersection to Sua-2, then a haircut*



CRM-M-27336-2024

2

person was seen standing at distance of 200 meter from intersection who wore T-Shirt and Capri. He panicked on seeing the police party and after throwing a transparent envelop on the ground from his right pocket of Capri and started running toward fields to whom I ASI apprehended with the help of accomplices and asked his name and address, he told his name as Sukhjider Singh alias Sukh son of late Balwinder Singh, R/o Adarsh Nagar, Dharamkot. To whom I ASI revealed his identity that "I ASI Ragwinder Singh, Incharge Police Post Kishanpura and have worn uniform, name plate placed to whom asked that "there may be some narcotic substance in the transparent envelope thrown away by you, therefore, the envelop thrown by you has to be searched. You have legal right that you may search the envelop in your possession from any Gazette Officer or Magistrate, who can be called at the spot or you may be taken to them "who said that, "I believe in you, you may search transparent envelope thrown by me". Upon this a notice U/s 50 NPDS has been to Sukhjinder Singh alias Sukh above. Accused Sukhjinder Singh alias Sukh signed on the notice in Punjabi and the witnesses gave their own testimony. Upon that an effort was made to join Public Witness before searching the transparent envelope thrown by Sukhjinder Singh Sukh above, but everyone expressed his own compulsion, due to that public witness could not be joined. On that polythene envelop was opened through Sukhjinder Singh alias Sukh and checked from which narcotic tablets of colour light orange were recovered. After taking out from the polythene envelope, narcotic tablets were counted and 160 in number. The narcotic tablets were place in the same polythene envelop and by putting in the bag of cloth, one parcel was prepared, stamped with my seal 'RP' and separate sample seal on clothe was prepared and after use,



CRM-M-27336-2024

3

the seal was handed over to ASI Jaswinder Singh. The parcel of recovered narcotic tablets and sample seal has been taken in to police possession vide separate memo, the memo has also been witnessed by the witnesses. upon that an offence under Section 22/61/85 NDPS is made out against Sukhjinder Singh alias Sukh. After writing, the Ruqa is being sent to police station through PHG Gurbakhsh Singh for registration of case. After registration of case the number be informed. Special reports be issued, PR Moga and officers be informed. I am busy at spot. SD/ Raghwinder Parshad, Incharge Police Post Kishanpura Kalan, P.S. Dharamkot dated 27.04.2023. Today in the area of Village Kishanpura, Time 8:15 PM. Today on receiving the Ruqa, after registration of case under above offence and above accused, Original Ruqa and copy of FIR is being sent through SCT to Investigating Officer. After the preparing, the special report are being sent to the Illaqa Magistrate and senior officers through SCT Gurjant Singh 561/Moga, PCS is being informed, enclosed Rapat No.31 dated 27.04.2023 AT 9.25PM.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in this case. There is no evidence against the petitioner which would connect him with the commission of crime. He further submits that the distance between the police party and the petitioner was found to be 200 meters, even in that situation, the police party had identified the petitioner and saw him throwing the alleged envelope as has been narrated in the FIR, which is totally unbelievable. The police party in the FIR has also failed to mention as to in which direction the petitioner ran from the spot. The

**CRM-M-27336-2024****4**

petitioner is behind the bars since 27.04.2023, investigation in the case is complete whereas *Challan* stands presented on 11.09.2023 and charges framed on 14.09.2023. Out of total 17 prosecution witnesses, only two witnesses have been examined as on date. The petitioner has undergone 1 year 3 months and 28 days in custody, meaning thereby trial of the case is moving at a snail's pace and conclusion of the same may take sufficient time and therefore, further incarceration of the petitioner would serve no useful purpose.

Notice of motion.

On behalf of the State

4. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab accepts notice on behalf of the respondent-State and has produced the custody certificate dated 26.08.2024 of petitioner, which is ordered to be taken on record subject to just exceptions and vehemently opposes the concession of regular bail to the petitioner on the ground that allegations against the petitioner are of serious nature. However, he could not controvert the custody period undergone by the petitioner.

5. **Analysis**

Investigation in the case is complete and challan stands presented on 11.09.2023 and charges framed on 14.09.2023. Out of the total 17 prosecution witnesses, only two witnesses have been examined as on date which makes it apparent that trial of the case is moving at a snail's pace and may take long time to conclude therefore, no useful purpose would be served by further incarceration of the petitioner.

As far as the pendency of other cases and involvement of the petitioner in other cases, as detailed in the custody certificate is concerned,

**CRM-M-27336-2024****5**

same will not be a predicament in view of 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 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 lend the petitioner in a situation of denial the concession of bail.

Hon'ble the Supreme Court in its latest judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571, observed as under :-

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The



CRM-M-27336-2024

6

rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

Reliance can also 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 are 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 Nimesh 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 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) vs. 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.

6. DECISION

Be that as it may, considering the aforesaid facts and circumstances, investigation in the present case has already been completed and challan stands presented on 11.09.2023. Trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner behind the bars. Accordingly, the petitioner is directed to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In light of the aforesaid discussions, 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.

(SANDEEP MOUDGIL)
JUDGE

August 27, 2024
Manpreet

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