



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No.27282 of 2024 (O & M)
Date of decision : 16.7.2024

Tarlochan Singh @ Tosha**.....Petitioner****Versus****State of Punjab****.....Respondent****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Anmol, Advocate, for the petitioner

SANDEEP MOUDGIL, J (ORAL)

This is a petition seeking regular bail in FIR No.362 dated 12.12.2022, under Sections 21 (c), 29 of NDPS Act, 1985, and Section 25 of Arms Act, 1959, registered at Police Station Phillaur, District Jalandhar.

2. Learned counsel for the petitioner would contend that location of the petitioner was disputed as he was actually picked up from Gurudwara Amb Sahib, Phase-7, Mohali, contrary to the stand of the prosecution that the petitioner was arrested from bus-stand, Phillaur, which is at a distance of more than 45 kms. from the alleged site of arrest. He would also contend that CCTV footage and the location of mobile phone of the petitioner are already in the custody of trial Court which would determined the place of arrest of the petitioner denying the story of the prosecution.

3. Notice of motion.



4. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab, accepts notice on behalf of the respondent-State, who has produced the custody certificate, which is taken on record. According to the custody certificate, the petitioner is behind the bars for the last more than 1 year and 6 months. He would contend on the line of the prosecution case that actually the petitioner was arrested from Phillaur and it is incorrect to suggest that he was arrested from Gurudwara Amb Sahib, Phase-7, Mohali.

5. Be that as it may, there is a dispute qua the arrest of the petitioner and the case would be tested at the strength of evidence in the form of CCTV footage and mobile tower locations qua the number of cell phone used by the petitioner and his co-accused Jograj Singh. Apart from that, the petitioner has incarcerated behind bars from 1 year, 6 months and 26 days by now wherein after framing of the charges on 6.7.2023, only 2 witnesses have been examined out of 14 witnesses and it is on that account wherein trial will also take a long time and the petitioner has suffered a reasonable time behind bars particularly added with the fact that the place of arrest and the timing is also disputed by CCTV footage and mobile tower locations and he cannot be detained behind bars for an indefinite period, which would amount to violation of Article 21 of the Constitution of India.

6. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. 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; wherein it was held as under:

“10. Directions given by this Court in **Hussainara Khatoon** (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that



behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...." (emphasis added)

7. Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in “**Abdul Rehman Antulay and others v. R.S. Nayak and another**”, **1992(2) RCR (Criminal) 634**, observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

- I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

8. In view of the discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate,

concerned.

9. The present petition is, hereby, allowed.
10. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SANDEEP MOUDGIL)
JUDGE

16.7.2024
Ashwani

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