



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29563-2024
DECIDED ON: 01.10.2024

MUNESHWAR KUMAR DAANGI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. I.S. Kooner, Advocate and
Mr. Manbir Singh Gill, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.358, dated 09.12.2023, under Section 18 of NDPS Act (Section 29 of NDPS Act added later on), registered at Police Station City Rajpura, District Patiala.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“At this stage a Rukka was received from ASI Gurmeet Singh 873 Police Station City Rajpura regarding registration of u/s 18/61/85 NDPS ACT against Muneshwar Kumar Daangi son of Sukhdev Mhato Resident of Village Unta Police Station Sadar Chatra District Chatra (Jharkhand) and Kiran Devi wife of Kuldeep Ganju Resident Village Baratri Post Office Piri

Police Station Simaria District Chatra (Jharkhand) vide hand of PHG Gurmeet Singh 3/340 at Police Station. Details of which are," SHO City Rajpura, Jai Hind. Today I, ASI along with Gurwinder Singh 1222/PTL, Rajinder Singh 778, C Karamjit Singh Cheeman 26/PTL, F/C Ramanjit Kaur 678/PTL, PHG Gurmeet Singh 3/340 on Government Vehicle bearing No. PB11.CF3819 driven by ASI Ajaib Singh 3106 regarding area patrol and search in connection with suspicious and bad men with laptop and printer were going from court complex road to the new under bridge side when the police party reached a little ahead of TDI City, it was around 11:40 A.M., from the under bridge side, a man and a woman wearing a saree were seen walking on the roadside, both carrying side bags on their right shoulders. On seeing the coming police vehicle, they panicked and turned to the side towards Kharajpur village and started walking fast. I suspected them and we turned our vehicle to their side and stopped the man and the woman walking along with their backpacks with the help of colleagues and asked their names. The man gave his name as Muneshwar Kumar Dangi, son of Sukhdev Mahato, a resident of village Unta, police station, Sadar Chatra, district. Chatra (Jharkhand), whose age is about 32 years, color wheatish, height about 5 feet 5 inches, tattoo of M.K.R.K on right arm, beard and a haircut. Then Man ASI inquired about the name of the arrested woman in the presence of F/C Sipahi Ramanjit Kaur 678/PTL who gave her name as Kiran Devi wife Kuldeep Ganju resident village Baratri Dakkahana Piri Police Station Simaria District Chatra (Jharkhand). I revealed my identity and said in Hindi that I am ASI Gurmeet Singh, investigating officer posted at Police Station City Rajpura and I suspect that you are carrying drugs, but

you have the legal right to have a Gazetted officer or magistrate search you and your black backpack and they can be called on spot or you may be taken to them. However, Muneshwar Kumar Dangi thought for a while and said that I have understood everything well, I am confident that you can search me and my black backpack. Then Muneshwar Kumar Dangi signed a notice u/s 50 NDPS Act and gave personal statement consent vide separate memos the same were signed corrected by him and the witnesses. Then I, alongwith F/C Ramanjit Kaur 678/PTL revealed my identity to Kiran Devi and said in Hindi language that I am ASI Gurmeet Singh, Investigating Officer stationed at Police Station City Rajpura, I suspect that there are drug in your black backpack, but you have the legal right to carry yourself and your black backpack by Gazetted officer or a magistrate can also conduct the search and they can be called on spot or you can be taken to them. But Kiran Devi thought for a while He said that I have understood everything well, but I am fully confident that I can search her and bag pack, color black, in her possession. Then I issued a notice to the said Kiran Devi under Section 50 of the NDPS Act and Personal statement consent was record vide separate memos and the same were signed corrected by her and the witnesses. Then I took the opportunity to stop the passers-by and tell the situation and tried to make a private witness, but no one was ready to be a witness. Everyone kept telling their own compulsion. Then I first opened and checked the back bag of color black in the possession of the said Muneshwar Kumar Dangi and found a large amount of black colored substance in a transparent plastic bag, which on opening the bag and found opium in it and I also asked the said Muneshwar Kumar Dangi who

revealed that it was opium. Then I asked Muneshwar Kumar Dangi about presenting the license or permit for keeping opium in his possession but Muneshwar Kumar Dagi said that he could not produce any license or permit for keeping opium in his possession. I measured the same on computerized weighing of the transparent plastic bag including the recovered opium, the total weight of which was 2 kg 600 grams of opium. Then I put the plastic bag and recovered opium in a plastic box and then kept the plastic box in a back bag color black and prepared a parcel with cloth by putting the bag in it and serial number 1 was marked on it. Parcel containing 2 kg 600 g opium in transparent plastic bag in a box plastic was sealed by me with his seal letter GS. After opening the back bag of black color in the possession of the said Kiran Devi, a black substance was found in a transparent plastic bag and she also who told that it is opium. I asked the said Kiran Devi about presenting the license or permit for keeping opium in her possession and she said that she has no permit or license. I conducted a computerized weighing of the transparent plastic bag containing the recovered opium, which resulted in a total weight of 1 kg of opium. By putting the plastic bag with recovered opium in a plastic box and then putting the plastic box in a back bag color black, a cloth parcel was prepared was prepared and serial number 2 was marked on it. Parcel containing 1 kg opium in a transparent plastic bag in a box plastic was sealed by me with seal letter GS. Specimen seals prepared separately. After the usage of stamp, the same was handed over to ASI Gurwinder Singh 1222/PTL. Then I took possession of 2 kg 600 grams of opium and 1 kg of opium from both accused in police possession through recovery memos. Recovery memos were signed by witnesses as correct.

Muneshwar Kumar Dagi and Kiran Devi have committed the offense 18-61-85 under the NDPS Act by having in their possession 3 kg 600 grams of opium. Therefore, for registering the case against Muneshwar Kumar Dangi and Kiran Devi, the complaint is being sent vide hand of PHG Gurmeet Singh 3/340 to Police Station, City Rajpura. The case number be communicated after registering the case. Special reports be issued. I am present on spot with fellow colleagues for further investigation. At T-Point Village Kharajpur time 01:00 PM Sd/-Gurmeet Singh ASI Police Station City Rajpura Date 09.12.2023". Rukka was received at P.S. A case has been registered against Muneshwar Kumar Dangi and Kiran Devi. Copies of FIRs are being sent to the service area magistrate and senior officer vide hand of ASI Jaspal Singh 148. Intimation is being given to 1/C Control Room Patiala. Case file vide hand of PHG Gurmeet Singh 3/340 is being sent to ASI Gurmeet Singh 873 Police Station City Rajpura on spot for further investigation. DDR NO:-25AT:-02.31PM Date: - 09.12.2023"

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, recovery of 02 kg 700 grams of opium was effected from from the present petitioner. He further contends that the petitioner is in custody since 09.12.2023 and nothing is to be recovered from the present petitioner, therefore, his custodial interrogation is not required at all. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case. He further asserts that

the sample drawn was of 10 grams alone which itself is contrary to the provisions of Rule 11(1) of NDPS Rules, 2022, as amended by the Central Government, according to the same, 24 grams should have been collected as sample.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that 2 kg 700 grams of opium was recovered from the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 09 months and 18 days for which the petitioner has suffered incarceration; the petitioner is not involved in any other case, meaning thereby, he is not a habitual offender, as is evident from custody certificate produced today in Court.

As far as report of laboratory is concerned, is also authenticating the submissions raised on behalf of the petitioner that quantity of the sample drawn was only 10 grams each in envelope No.1 and envelope No.2 as well, which is contrary to the provisions of Rule 11(1) of NDPS Rules, 2022, which has been reproduced hereinbelow:-

“11. Quantity to be drawn for sampling. – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.”

Apart from above, investigation is complete, challan stands presented to Court on 30.04.2024, charges have been framed on 01.07.2024

and out of total 14 prosecution witnesses, only 01 witness has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 enshrined 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.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, 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.

01.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No