



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32937-2024

Date of Decision: September 11, 2024

SANDEEP KUMAR ALIAS PRINCEPetitioner(s)

VERSUS

THE STATE OF PUNJABRespondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Himmat Singh Sidhu, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

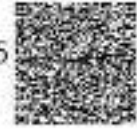
The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.64 dated 04.09.2023, under Sections 21 of NDPS Act, 1985, (Section 25 of Arms Act and Section 29 of NDPS Act added later on) registered at Police Station Singh Bhagwantpur, District Rupnagar.

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

‘To, the Station House Officer, Police Station Singh Bhagwantpur, Jai Hind, today myself ASI along with AS Balvir Singh No. 572/R, Joginder Singh No. 530/R, HC Gurjit Singh No. 913/R, C-II Parvinder Singh No. 380/R on government car bearing registration No. PB65-AW-5132being driven by ASI Gurchail Singh No. 1010/R are present on barricading T-point of Behrampur Zimidara at main highway



road in connection with patrolling and search of smugglers then at about 4.00 PM, a car colour white seen coming from village Behrampur Zimidara side and myself ASI has given signal to stop the said car then the driver of car has suddenly stopped his car and tried to turn back but due to narrow road, he could turn his car back, therefore myself ASI along with associate officials has apprehended the driver of said car. In the meantime, driver of said car has make done the driver side of his car and thrown a heavy transparent polythene in the shrubs on the side of road and Heroin was clearly visible from the said polythene. Myself ASI has noted down the registration number of said car as PB43-F-0853 make 1-10 Grand colour white, thereafter myself ASI has asked from the driver of car his whereabouts then he disclosed his name as Maninder Singh@ Mani son of Pargat Singh resident of house NO. 794, Type-III Nuho Colony, Police Station Sadar Rupnagar and the person sitting on the conductor seat of car has stated his name as Sandeep Singh@ Sandy son of Gurtej Singh resident of village Kaur Singh, District Mansa, at present resident of house No. 1700 Type-I, Nuho Colony, Police Station Sadar Rupnagar. Then myself ASI has asked them about the transparent polythene bag thrown by them but both the above said persons could not give any satisfactory reply. Thereafter myself ASI has picked up the transparent polythene bag thrown by Maninder Singh@ Mani and Sandeep Singh Sandy from their car and on checking the said transparent polythene bag, Heroin recovered from it. On weighing of above said recovered Heroin on the mobile type weighing machine, then its weight is found to be 126 Grams of Heroin along with polythene. Myself ASI has put said Heroin in a plastic box and after putting said plastic box into a cloth, turned the same into parcel and sealed the parcel by myself ASI with my seal bearing impression KS and also prepared the sample of seal and after using seal, the same has been handed over to ASI Balvir Singh NO. 572/R. The above said recovered 126 Grams of Heroin duly sealed with seal bearing impression KS and sample of seal have been taken into police possession through memo. In



this way, Maninder Singh @ Mani and Sandeep Singh@ Sandy above said have committed offence under section 21-61-85 of NDPS act by keeping 126 grams of Heroin along with polythene, therefore the statement is being sent to the Police Station by the hand of C-II Parvinder Singh NO. 380/R for the registration of case against above said Maninder Singh@ Mani and Sandeep Singh@ Sandy, after register case, number of the same be intimated. Officers and control room Rupnagar be intimated through wireless and special reports be issued. Myself ASI along with associate officials is busy for investigation at the spot. Sd/- Kewal Singh, ASI, CIA Staff, Rupnagar.'

3. **Contentions**

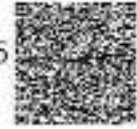
On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was nominated later on the basis of disclosure statement of co-accused namely Malkit Singh @ Mahi who has been granted the concession of regular bail by this Court vide order dated 15.02.2024 passed in CRM-M-6937-2024 (Annexure P-9).

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 almost 08 months 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the



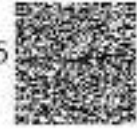
Court that in the present FIR challan stands presented on 04.03.2024 but charges are yet to be framed. He further submits that the petitioner is involved in two other cases meaning thereby he is a habitual offender.

4. **Analysis**

From the above case it can be culled out that the petitioner has been nominated only on the basis of disclosure statement of the co-accused, otherwise he was not even named in the instant FIR also there is no other incriminating material connecting the petitioner with the alleged commissioning of offence 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 04.03.2024; charges are yet to be framed, there are total 26 prosecution witnesses 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:-

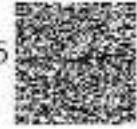
“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been



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.

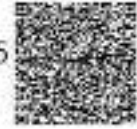
4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an 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 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 the 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 cases and involvement of the petitioner in other cases 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 concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. 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.

(SANDEEP MOUDGIL)
JUDGE

11.09.2024
Sangeeta

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