



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35899-2024
DECIDED ON: 16.12.2024

GURSEWAK SINGH @ GAIBIPETITIONER

VERSUS

STATE OF HARYANARESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Himani Anand, Advocate and
Ms. Vandana Bhatia, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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.435, dated 01.12.2023, under Section 15 of the NDPS Act (Sections 27-A and 29 of the NDPS Act and Section 201 IPC added later on) registered at Police Station Sadar Pehowa, District Kurukshetra, Haryana.

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

“Copy of complaint is attached. To SHO PS Sadar Pehowa, Jai Hind. Today on 01.12.2023, I SI Naresh Kumar No. 318A, ANC KKR alongwith HC Praveen Kumar No. 281 KKR, HC Pawan Kumar No. 757 KKR, Constable Dinesh Kumar 310 KKR, Constable Vikram 98 KKR, SPO Sanjay Kumar No. 201 KKR in government vehicle HR 07GV-7171 Make Bolero driven by HC Vinod Kumar No. 341 KKR started at about 2.00 PM from ANC

KKR in search of illicit drugs, via Mohan Nagar chowk Kurukshetra, Third Gate Kurukshetra towards bus stand Murtazapur. At about 3 pm we had just reached when at about 03.10 PM secret agent met me SI and gave information that Gursevak Singh alias Gaibi, son of Amarjeet Singh, resident of village Jogipur, district Patiala Punjab and Narsi Singh alias Kala, son of Tiwari Ram resident of village Samgoli, district Mohali Punjab, load and carry goods in their canter No. PB11DC2591 Make Tata from Punjab to Madhya Pradesh, Rajasthan, Maharashtra and while coming back, in the garb of goods they hide poppy husk from Madhya Pradesh and Rajasthan and do the work of supplying the same in Punjab. That today also they are coming from Rajasthan with poppy husk on NH152D. If check post is laid immediately on NH152D from Pehowa towards Kaithal than canter No. PB11DC2591 can be apprehended and above mentioned Gursewak Singh alias Gaibi and Narsi Singh alias Kala be searched along with their canter then poppy husk can be recovered from them. Information was reliable hence notice under section 42 NDPS Act was prepared and sent through SPO Sanjay Kumar 201 at about 3.30 pm to Mr. Rajat Gulia HPS/DSP Pehowa. Thereafter I SI informed the fellow officer about the secret information and started laying the check post on NH152D Pehowa Road towards Kaithal for about half a kilometer along with the fellow officers. That after about 15-20 minutes one canter No. PB11DC2591 was seen coming from Kaithal. That I SI with the help of the fellow officers indicated the canter driver to stop, thereafter the canter driver stopped his canter on the side of the road. That I SI knocked on the driver side window and on opening the window asked the person who opened the window about his name and address on which he replied

that his name was Narsi Singh alias Kala son of Tiwari Ram resident of Village Samgoli, PS Derabassi District Mohali, Punjab who was the driver and the person sitting on the cleaner side told his name as Gursewak Singh alias Gaibi son of Amarjeet singh resident of Village Jogipur PS Sanour, District Patiala who was the owner. I informed Gursewak singh alias Gaibi and Narsi Singh alias Kala about my rank, name and place of posting and asked them to keep sitting in the canter and I SI informed Gursewak Singh alias Gaibi and Narsi Singh alias Kala through separate notices under section 50 NDPS Act that I have suspicion that they are carrying drugs in their possession and in their canter that is why it is important that their search be conducted and that they have be legal right that they can get their search conducted by some Magistrate or some Gazetted Officer. Separate notices under section 50 NDPS Act were prepared and read out and made understood to Gursewak Singh alias Gaibi and Narsi Singh alias Kala. Gursewak Singh alias Gaibi and Narsi Singh alias Kala signed on their respective notices along with witnesses HC Pawan Kumar No. 757/KKR and HC Praveen Kumar No. 281/KKR. After thinking for some time Gursewak Singh alias Gaibi and Narsi Singh alias Kala got recorded in their notices that they wanted to get their and their canter's search conducted in the presence of some gazetted officer. Separate consent notices under section 50 NDPS Act were prepared and read over and made understood to Gursewak Singh alias Gaibi and Narsi Singh alias Kala. Both of them signed on their respective consent notices along with witnesses HC Pawan Kumar No. 757/KKR and HC Praveen Kumar No. 281/KKR. Thereafter at about 4.30 pm I SI from my mobile no. 98963 71645, called Sh. Rajat Gulia HPS/DSP Pehowa

District Kurukshetra on his mobile No. 70567 00104 and informed him of the situation and requested him to reach the spot. DSP Sir replied that he will reach there some time. At about 5.30 pm Sh. Rajat Gulia, HPS/DSP Pehowa District Kurukshetra in government vehicle along with his staff reached the spot. At the same time SPO Sanjay Kumar 201 also reached the spot who handed over the copy of notice under section 42 NDPS Act received by the DSP. I SI again informed the DSP about the situation and presented the notices under section 50 NDPS Act and the consent notices under section 50 NDPS Act before the DSP. All the four notices under section 50 NDPS Act were marked as seen by the DSP and signed by him. I SI requested the independent persons crossing from the road to join the investigation however everyone left from the spot expressing their inability. Thereafter Sh. Rajat Gulia, HPS/DSP Pehowa District Kurukshetra informed Gursewak Singh alias Gaibi and Narsi Singh alias Kala about his rank, name and place of posting and enquired from them. After that DSP conducted search of SI regarding drugs. During search no drugs were found from the personal search of the SI. Recovery memo was prepared which was signed by Gursewak Singh alias Gaibi and Narsi Singh alias Kala, I SI and witnesses HC Pawan Kumar No. 757/KKR and HC Praveen Kumar No. 281/KKR. Thereafter as per the instructions of the DSP personal search of firstly Gursewak Singh alias Gaibi and then of Narsi Singh alias Kala in regards to illicit drugs were conducted at the spot. During the search no drugs were found from the clothes or the personal search of Gursewak Singh alias Gaibi and Narsi Singh alias Kala. Thereafter search of cabin of Truck No. PB11DC 2591 make Tata was got conducted. In the cabin as well no drugs were found and

thereafter the rear body of the truck were searched and during the search of the body of the canter, inside the iron valves of sugar mill, 3 weighted white bags and 1 weighted bag of black color were found which when I SI opened in front of the DSP, poppy husk was found in the 3 white plastic bags and in the black colored plastic bag with green strip poppy straw was found. That I SI asked the apprehended persons Gursewak Singh alias Gaibi and Narsi Singh alias Kala who also replied in unison that it was poppy. Thereafter the recovered poppy husk was weighed on digital weighing scale present in the government vehicle, on which the weight of white color plastic bag was found to be 20 kg which was marked as A-1. Thereafter second white bag was weighed which was found to be 20 kg and was marked as A-2. Thereafter third white colored plastic bag was weighed which was also found to be 20 kg and marked as A-3. After that black colored bag with green strip was weighed and found to be 25 kg which was marked as A-4. That all 4 plastic bags together weighed 85 kgs. I SI prepared parcel of the recovered poppy husk and affixed my seal as NK/2 and DSP sir also affixed his seal as RG/2. Thereafter I SI separately prepared two sample seals and affixed my seal of NK, 2-2 on each. After using the seal it was handed over to HC Pawan Kumar No. 757/KKR. DSP Sir also affixed his seal RG/2-2 on the sample seals. After using his seals DSP Sir kept the seal with himself and marked the case property parcel of Poppy husk and both sample seals as ATTESTED. After that on checking the dashboard of the cabin of the above mentioned canter, RC of the canter was recovered as per which owner of the canter No. PB11DC 2591 was Gursewak Singh son of Amarjeet Singh resident of Jogipur Patiala which was issued by the registration authority Patiala.

Apart from this the bill and bilty of the loaded goods was found from the dashboard of the canter. In which it was mentioned that iron goods of Gurdaspur Co-operative Sugar Mill Ltd. have been loaded from Puna, Maharashtra. Parcel of case property consisting of plastic bags containing poppy husk along with both sample seals, canter No. PB11DC 2591 along with RC and loaded goods along with bills and bilty, total 14 pages as evidence were taken into police possession through recovery memo. Recovery memo was prepared and signed by Gursewak Singh alias Gaibi and Narsi Singh alias Kala as well as witnesses HC Pawan Kumar No. 757/KKR and HC Praveen Kumar No. 281/KKR. DSP Sir also marked the recovery memo as ATTESTED and affixed his signatures. Offence under section 15-61-85 NDPS Act was made out against accused Gursewak Singh alias Gaibi and Narsi Singh alias Kala for keeping in their possession total 85 kgs of poppy husk including plastic bags, on which written information is being sent through constable Dinesh Kumar 310/KKR to PS Sadar Pehowa Kurukshetra for registration of FIR. After registration of FIR, FIR No. be intimated and special report of the case be sent to higher officers and second IO be appointed and sent to the spot for further investigation. I SI along with fellow officer along with accused, case property are present at the spot.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the petitioner along with co-accused Narsi Singh @ Kal was arrested on the basis of secret information while they were travelling in a canter bearing registration No.PB11-DC-2591 for keeping 85 kgs of poppy

husk in four plastic bag without any permit. He further contends that the alleged contraband is marginally over and above the commercial quantity. It has been contended on behalf of the petitioner that his co-accused Partap Singh has already been granted the concession of anticipatory bail by this Court vide order dated 22.04.2024 passed in CRM-M-54-2024 (Annexure P-2). It has been further contended that the petitioner is a man of clean antecedents as he is not involved in any other case.

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 the alleged recovery was effected from the alleged canter which was carrying the said contraband to Punjab from Madhya Pradesh and the petitioner himself is the owner of said canter which was used for drug trafficking.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year and 08 days for which the petitioner has suffered incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; co-accused Partap Singh has already been granted the concession of anticipatory bail by this Court vide order dated 22.04.2024 passed in CRM-M-54-2024 (Annexure P-2) and also the fact that the alleged contraband is marginally over and above the commercial quantity.

Apart from above, investigation is complete, challan stands presented to Court on 22.05.2024, charges have been framed on 19.09.2024 and out of total 23 prosecution witnesses, none has been examined so far,

which is suffice for this Court to infer that the conclusion of trial will take 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.

(SANDEEP MOUDGIL)
JUDGE

16.12.2024

Poonam Negi

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