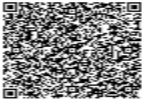


2024:PHHC:164128



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33064-2024

DECIDED ON: 10.12.2024

TARANJOT SINGH ALIAS TARANI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashandeep Singh Sandhu, 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., seeking regular bail to the petitioner in case FIR No.153 dated 16.09.2023, under Section 22(c) of NDPS Act, 1985 registered at Police Station Nathana, District Bathinda, Punjab.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of Ruga, "TO, SHO Police Station Nathana, Fateh, Today myself SI along with SI Kamaljit Singh 314, Const. Karan Dem 352 on a private vehicle driver thereof was PC Rakesh Kumar 22092, were going towards Bhucho Khurd via Bhucho Mandi for patrolling and in search of suspicious persons and checking, then time would be around 11:30 AM, a young clean shaven person was sitting over his motorcycle on the left side of the road at Railway Phatak Kahan Singh Wala Khas, and he was seen checking his transparent polythene bag holding in his hand and who after seeing police party got scared, then myself SI nabbed the above said young clean shaven person on the basis of suspicion along with his motorcycle with the help of fellow officials and also took custody of the

transparent polythene bag and asked his name and address, then he disclosed his name as Taranjot Singh @ Tarni son of Mukand Singh son of Bhag Singh resident of village Badiala Police Station Sadar Rampura District Bathinda. The strips of intoxicating tablets could be easily seen in the transparent polythene bag in the possession of Taranjot Singh @ Tarni. A private witness was tried to join into the police party at the spot, but no one could be joined. Thereafter myself SI informed the above said Taranjot @ Tarni under the notice under section 50 of the NDPS Act THAT I, SI Gurinder Singh 70/Bathinda, am deployed as an investigating officer at Special Staff, Bathinda, and I am wearing my uniform as per my rank and which is bearing my name plate. Intoxicating tablets could be easily seen in the transparent polythene bag in your possession, upon which, the transparent polythene bag and motorcycle bearing number PB 10Y 0338 in your possession are to be searched under the NDPS Act. You have a legal right that you can get the search conducted of the transparent polythene bag and above said numbered motorcycle from some Magistrate Sahib or from some gazetted officer. Upon which, above said Taranjot Singh said that "I want to get the search conducted of the transparent polythene bag and above said numbered motorcycle from some gazetted officer". Upon which notice under section 50 NDPS Act was prepared separately and witnesses had appended their signatures over the notice. Thereafter, myself SI informed about the facts of the case on phone to Rashpal Singh, Deputy Superintendent of Police, Sub Division Bhucho and requested him to reach at the spot. Who had told above said Taranjot Singh @ Tarni under notice under section 50 of the NDPS Act that "I, Rashpal Singh, am deployed as a Deputy Superintendent of Police at Sub Division Bhucho and I am wearing uniform as per my rank which is bearing my name plate. Strips of Intoxicating tablets could be easily seen in the transparent polythene bag carried by you in your possession. Upon which, search is to be conducted of the transparent polythene bag and the motorcycle bearing number PB10Y0338 under the NDPS Act, you have legal right that you can get the search conducted of the transparent polythene bag and above said numbered motorcycle from some other Magistrate Sahib or from some other gazetted officer. Upon which, Taranjot Singh @ Tarni replied "You can conduct the search of the transparent polythene bag and the motorcycle in my possession". Upon which, notice under section 50 NDPS was prepared separately and the same was got signed by the witnesses, upon which, as per the directions of DSP Sahib and in his presence, myself sI conducted the search of the transparent polythene bag in possession of above said Taranjot Singh @ Tarni, and upon checking the same, 250 strips of intoxicating tablets were recovered, in which each strip was containing 10 tablets total 2500 intoxicating tablets were found which were marked as "Tramado- Hydrochloride Tablets USP 100 Mg CELCIDALE upon which B. no. 239AA02 MFG Date

06.2023 Expiry Date 06/2025 Manufactured by Pure and xx Health Care Pvt Ltd, (A Subsidiary by Atoms Drugs and Pharmaceuticals Ltd.) Plot no. xA/27-30 Sector 8A, LTE Sector xx Haridwar 249403 (Uttarakhand) was written, which were recovered. The recovered intoxicating tablets were put into the same transparent plastic polythene bag and a cloth parcel was prepared and the parcel was stamped with stamp bearing impression GS and the sample stamp was prepared separately. The stamp after was handed over to SI Kamaljit Singh 314/Bathinda. The parcel was attested by DSP Sahib. Thereafter, myself SI conducted the search of Motorcycle mark Hero Splendor Colour Black Blue bearing number PB10DY0338 in the presence of DSP Sahib as per his directions, and upon checking the same, nothing objectionable item was found and even no document regarding the ownership of the motorcycle was found from it. Thereafter, one cloth parcel containing transparent polythene bag having 250 strips total 2500 intoxicating tablets marked as above duly stamped with stamp impression GS along with sample stamp and also one motorcycle bearing above said number were taken into police possession by myself SI vide a separate memo of recovery. The witnesses had witnessed the memo and it was attested by DSP Sahib. The above said Taranjot Singh @ Tarni, while keeping intoxicating tablets in his possession that too without any bill, license or permit, and, by keeping above said recovered intoxicating tablets in his possession by Taranjot Singh @ Tarni has committed offence under section 22C/61/85 of NDPS Act, upon which a ruga was written against Taranjot Singh @ Tarni under section 22C/61/85 NDPS Act and was sent to the police station by hand through PC Rakesh Kumar 22092 for registration of FIR and after registration of FIR, its number be got informed. Special reports be prepared. DCR has informed. Myself SI along with fellow officials are busy in investigation at the spot. Today within the area Near Phatak Kahan Singh xx at: 1:30 xx Sd/- Gurinder Singh SI/70/Bathinda Special Staff District Bathinda dated 16.09.2023. ON receiving the above said ruga in the police station, the above said FIR was registered under above said offences against Taranjot Singh @ Tarni and the record of the same is being completed. Copies of FIRs as special reports are being sent in the service of Ilaga Magistrate Sahib and higher officials by hand through PHG Raju Ram 21979. DCR is being informed. Original ruga long with case file are being sent in the service of SI Gurinder Singh 70/Bathinda by hand through PC Rakesh Kumar 22092. ”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner contends that in the present case there is violation of standing instructions/guidelines issued by DGP, Punjab, as

private vehicle has been used by the DSP. It is further contended that as per the prosecution story, the alleged recovery is from A transparent bag, which is unbelievable, as any person will not expose the contraband in the public domain.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He opposes the prayer made in the instant petition, though not in a position to controvert the submissions made by learned counsel for the petitioner.

4. **Analysis**

Considering the custody period already suffered by the petitioner i.e., 1 year, 2 months and 21 days, who is not involved in any other case, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 10.01.2024, charges stands framed on 21.02.2025 and out of total 11 prosecution witnesses only 2 has been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 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

10.12.2024

Meenu

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