



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-33796-2024 (O&M)
DATE OF DECISION: 12.08.2024

AMANDEEP SINGH ALIAS AMAN ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S.Gill, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

CRM-31141-2024

This application has been filed for placing on record
Photographs as Annexure P-3.

For the reasons recorded in the application, the same is
allowed and photographs as Annexure P-3.

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has
been invoked seeking the concession for the grant of regular bail to the
petitioner in FIR No.134 dated 03.09.2023, under Sections 22 and 27 of
The Narcotic Drugs and Psychotropic Substances Act, 1985 registered
at Police Station Civil Lines, Patiala, District Patiala.

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

*‘At this time one ruqa written by SI Karamjit Singh
A/SHO, Police Station Civil Lines, Patiala was received in the*



police station by hand through C. Rupesh No.2508 for registration of case against Amandeep Singh @ Aman son of Gurkirat Singh, resident of House No.26, Street No.08, Vikas Nagar, Patiala, Harpreet Singh @ Monty son of Trilochan Singh, resident of House No.73/2, Tobha Kashmirian, near Tavkali turning, Patiala. The contents the same are an under: To, SHO, Police Station, Civil Lines, Patiala, Jai Hind! Today, I, SI along with ASI Pawan Kumar No.2868, ASI Suba Singh No.3085/Pat; SC Gagandeep Singh No.3270 and C. Rupesh No.2508 were riding private vehicles and were present near the round about PRTC Workshop, Nabha Road, Patiala in connection with patrolling and in search of suspicious persons. In the meantime, secret informant came to me SI and gave information that Amandeep Singh @ Aman son of Gurkirat Singh, resident of House No.26, Street No.08, Vikas Nagar, Patiala aged about 24 years, his description is height 6 feet, body medium, clean shaven and Harpreet Singh @ Monty son of Trilochan Singh, resident of House No.73/2 Tobha Kashmirian, near Tavkali turning, Patiala, aged about 42 years, his description is height 5'8", having beard and hair, body medium are habitual of selling intoxicant substance. Today also they are bringing intoxicant substance in their white coloured Verna Car bearing registration No.PB- 11CZ-3561 and are coming from Passiana side towards PRTC Workshop, Nabha Road, Patiala. If a raid is conducted right now, then huge quantity of intoxicant substance can be recovered from above mentioned Amandeep Singh and Harpreet Singh @ Monty. Upon this, I, SI issued report under section 42 NDPS Act to the senior officers at the spot. Thereafter, I, SI shared the above mentioned secret information with companions and laid nakabandi in planned manner and started checking the vehicles coming from main side. At about 10.00 PM, from the side of Partap Nagar, Railway Crossing No.24, one white coloured car was seen coming. Two



persons were sitting in it. I, SI along with companions made signal from torch light to stop. Then the driver of above mentioned tried to turn the car back instead of stop. I, SI with the help of companions stopped the above mentioned car and searched. The registration number of car was read as PB11CZ3561. Asked the name and address of the car driver and person sitting with him. Car driver disclosed his name as Amandeep Singh @ Aman son of Gurkirat Singh, resident of House No.26, Street No.08, Vikas Nagar, Patiala and the person sitting near to him disclosed his name as Harpreet Singh @ Monty son of Tirlochan Singh, resident of House No.73/2, Tobha Kashmirian, near Tavkali turning, Patiala., SI disclosed my identity to above mentioned occupants of car and told them that I suspect that there is something intoxicant substance in the car. I want to search them as well as their car, but they are legally entitled to get themselves as well as their car searched in the presence of any Magistrate or Gazetted Officer. They can be called at the spot. They thought little while and reposed faith in me and told that I can search them as well as their car. Upon this, consent statement of above mentioned Amandeep Singh and Harpreet Singh was recorded separately. Consent statements were signed by witnesses as also by above mentioned Amandeep Singh and Hapreet Singh. Thereafter, I, SI with the help of companions started search of above numbered car. On search of dash board of car one heavy polythene envelope found, which was opened and search and out of which white coloured substance recovered. In this regard, above mentioned persons were asked and they told that this is intoxicant substance 'chitta'powder. White coloured recovered intoxicant powder was weighed with the computer scale and which came to be 125 grams, which was put in a transparent plastic container and converted into parcel. I, SI sealed the above mentioned parcel with my seal bearing letters KS. Sample seal was prepared



separately. After use, seal was handed over to ASI Pawan Kumar No.2868. I, SI took the parcel of white coloured intoxicant powder duly sealed with sample seals and car bearing registration No.PB11CZ3561 make Verna, colour white, without any document, in police possession through separate recovery memos. Witnesses signed the memo. Above mentioned accused Amandeep Singh and Harpreet Singh @ Monty have committed offence under Section 22/61/85 NDPS Act by keeping 125 grams of intoxicant powder in their possession. Therefore, ruqa has got been typed, printout has been taken and same is being sent to the police station by hand through C. Rupesh No.2508 for registration of case against above mentioned Amandeep Singh @ Aman and Harpreet Singh @ Monty. After registration of case, I may be intimated case number. Control Room, Patiala be informed. I, SI along with companions am busy in investigation at the spot. In the area of P.R.T.C. round about, Patiala at 11.00 PM. Sd/- Karamjit Singh, A/SHO, Police Station Civil Lines, Patiala dated 03.09.2023...'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and alleged recovery of 125 grams of intoxicant powder was recovered from the dash board of the car. He submits that there exists a dispute of the time of arrest of the petitioner and in support thereof, he has placed on record photographs which depicts that the petitioner was arrested at 4:30 PM and not at 11:00 AM, therefore, version of the prosecution is doubtful. Even otherwise, co-accused Harpreet Singh has already been granted concession of regular bail by this Court vide order dated 03.07.2024 passed in CRM-M-29526-2024 and no fruitful purpose would be served by keeping the



petitioner behind the bars as conclusion of trial would take long time as out of total 11 Prosecution Witnesses, only 3 have been examined so far.

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 11 months and 5 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in many other FIRs 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 02.11.2023 and charges stands framed on 17.02.2024.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 11 months and 5 days, no recovery has been effected from the conscious possession of the petitioner, similarly situated co-accused has already been granted concession of bail by this Court and prosecution story is doubtful as the time of the arrest is also disputed. A 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 02.11.2023 and charges stands framed on 17.02.2024, out of 11 prosecution witnesses, 3 have been examined so far 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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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.

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 the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his/her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

12.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>