



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

217

**CRM-M No.35228 of 2024
Date of decision : 30.7.2024**

Ravinder Singh @ Varinder SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Meena, Advocate, for
Mr. Amit Arora, 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 for the grant of regular bail to the petitioner in FIR No.401 dated 17.9.2023, under Sections 21 (c) and 29 of the NDPS Act, 1985, registered at Police Station Goindwal Sahib, District Tarn Taran.

2. The above-mentioned FIR is reproduced below :

Today I ASI along with L/ASI Kulwinder Kaur No.1357/TT, S/CT Manjeet Singh No.332/TT, Manjinder Singh No.1512/TT, PHG Kulwinder Kaur 9968 along with laptop printer, stationary were on patrolling duty in search of anti social elements and were present at Chownk Dhunda Road, near Bag G.K., Goindwal Sahib regarding Nakabandi and were checking the vehicles. After some time from the Goindwal Sahib one motorcycle Hero Dulex bearing No.PB-46-AE-5998 was seen coming which was driven by one hair cut person and one lady was sitting as pillion rider. That the lady sitting as pillion



rider on the motorcycle on seeing the Nakabandi and seeing the police party in the uniform thrown away one plastic bag being held by her in her hands containing something on the road side. I ASI on the basis of suspicion got apprehended the motorcycle riders with the help of other colleagues while they were trying to turn backward and informed about their names and addresses. That the driver of the motorcycle disclosed his name as Ravinder Singh son of Sukhdev Singh, resident of Neem Wali Ghati, Goindwal Sahib and the lady sitting as pillion rider on the motorcycle disclosed her name as Paramjeet Kaur wife of Sukhdev Singh, resident of Neem Wali Ghati, Goindwal Sahib. On this on direction of my ASI, L/ASI Kulwinder Kaur No. 1357 inquired about the contents of the plastic bag thrown by Paramjeet Kaur on the road side and the driver of the motorcycle Ravinder Singh out of fear disclosed that the plastic bag which has been thrown on the road side the same contains heroin and further stated that he has given the said plastic bag to his mother. That I ASI informed Ravinder Singh and his mother Paramjeet Kaur about their legal rights and stated to them that they are having a legal right of getting themselves and the plastic bag thrown by them containing something searched either from some Gazetted Officer of the Punjab Government or from some Magistrate to whom I can call at the spot. On this accused Ravinder Singh and Paramjeet Kaur verbally stated that they are having full confidence upon him and stated that you can conduct search upon them and of the plastic bag thrown by them on the road side. Thereafter, the separate consent memos of accused Ravinder Singh and Paramjeet Kaur were got prepared separately. I ASI before conducting the search of plastic bag tried to join the public witness into the police party but no public witness could join the police party. Thereafter, on my ASI asking accused Paramjeet Kaur herself picked up the plastic bag thrown by her on the road side containing something with her own hands and the plastic bag was got checked and heroin type substance was got recovered from the same. That the recovered heroin was got weighed by me with the help of electronic weighing machine and the total weight along with the plastic bag turns out to be 300 grams of heroin. The same was kept in one plastic box and separate parcel was prepared and the



case property parcel was got sealed by me with my stamp RS and sample stamp was prepared separately. Stamp after used was handed over to L/ASI Kulwinder Kaur No. 1357/TT. That the parcel containing case property along with sample stamp and motorcycle hero deluxe No. PB-46-AE-5998 were taken into police custody vide separate memos. Since the accused Ravinder Singh son of Sukhdev Singh, resident of Neem Wali Ghati, Goindwal Sahib and Paramjeet Kaur wife of Sukhdev Singh, resident of Neem Wali Ghati, Goindwal Sahib, Police Station Goindwal Sahib, District Tarn Taran by keeping 300 grams of heroin in their possession has committed an offence under Section 21-C/29//61/85 of NDPS Act, thus, after getting the ruqa typed from the laptop and after taking out the printout the same is being sent to the police station for registration of case. (signed ASI Rajvinder Singh).

3. Arguments addressed by counsel for petitioner

Learned counsel for the petitioner submits that the recovery effected of the contraband (300 gm of heroin) is from the plastic bag as alleged to have been thrown by the co-accused Paramjit Kaur, who happens to be mother of the petitioner and it is only on that account Section 29 of the NDPS Act was attracted against the petitioner. He is not involved in any other case. Trial is to take long time as no witness has been examined so far after framing of the charges on 14.3.2024.

Notice of motion.

On the asking of Court, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State.

4. Submission by the State

Mr. Rattu, learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 10 months and 10 days.



Learned State counsel, on instructions, opposes the prayer for grant of bail on the ground that the petitioner was driving the motor cycle and his mother was pillion rider. The contraband recovered from their possession falls under commercial quantity. He further could not controvert the fact that the petitioner is not involved in any other case and this is the first time he is involved in alleged commission of offence.

5. Obiter Dicta

Having gone through the contents of the FIR as well as the statements made by learned counsel for the petitioner and the learned State Counsel, the custody period undergone by the petitioner who is not involved in any other case, meaning thereby he is not a habitual offender. In the instant case charges were framed on 14.3.2024, and out of 11 prosecution witnesses, none has been examined so far.

In the light of these facts, it is clear that trial is prolonged and likely to take long time and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in “**Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22**”.

6. Ratio Decidendi

Further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. 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; wherein it was held as under:



*“10. Directions given by this Court in **Hussainara Khatoon (supra)** to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the



guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in “**Abdul Rehman Antulay and others v. R.S. Nayak and another**”, **1992(2) RCR (Criminal) 634**, observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

7. Order

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his 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.

Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

30.7.2024
Ashwani

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