

2024:PHHC:004844

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M-35351-2023
Date of Decision : 15.01.2024

SUKHCHAIN SINGH @ SONY

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Vikas Gupta, Advocate,
for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.61 dated 08.06.2021, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Chohla Sahib, District Tarn Taran.

ALLEGATIONS AGAINST THE PETITIONER

2. The learned trial Court concerned passed the following order while declining plea of regular bail reads as under:-

“Applicant has filed the instant second bail application under Section 439 of Code of Criminal Procedure seeking his regular bail in the above noted case.

2. It is argued by the learned counsel for the applicant that applicant has been falsely implicated in this case by making false story by the police. It is submitted that the alleged 280 grams of

heroin has planted upon the applicant without complying with the mandatory provision and after picking the applicant from his house to complete the target of cases at the instance of senior police officials to settle the political score as such, noting has been recovered from the conscious possession of the applicant. It is submitted that applicant is suffering from chronic ailment of HIV positive and abdomen problems in the jail as such the applicant may be granted interim bail till the proper recovery of the applicant or till the time report of chemical examiner is received.

3. On the other hand it is argued by the learned Additional Public Prosecutor for the State that applicant was found in conscious possession of 280 grams of heroin of commercial quantity in presence of Gazetted Officer i.e. DSP. It is submitted that it not that the applicant is found involved in a criminal case for the first time. Rather the applicant earlier also is involved in as many as 17 FIRs. He has submitted the list produced by ASI Mangal Singh of Police Station Chohla Sahib. It is submitted that as per the list FIR No.27, dated 23.01.2004, under Section 420, 120 IPC, Police Station Chheharta, FIR No.53, dated 14.06.2012, under Section 349 IPC, Police Station L.K.B., District Ferozepur, FIR No.94, dated 01.07.2012, under Section 379, 413 IPC, Police Station Makhu, District Ferozepur, FIR No.348, dated 06.08.2016, under Section 323, 324 IPC, Police Station Civil Lines, Amritsar, FIR No.34, dated 06.02.2018, under Section 174-A, 229-A IPC, Police Station Sadar Tarn Taran, FIR No.45, dated 07.08.2016, under Section 21 NDPS Act, Police Station Chohla Sahib, FIR No.53, dated 20.08.2011, under Section 379, 411 IPC, Police Station Chohla Sahib, FIR No.20, dated 18.02.2012, under Section 22 NDPS Act, Police Station Chohla Sahib, FIR No.46. dated 22.04.2013, under Section 22 NDPS Act, Police Station Chohla Sahib, FIR No.52 dated 19.08.2011, under Section 61 Excise Act, Police Station Chohla Sahib, FIR No.17, dated 18.02.2012, under Section 379, 411 IPC, Police Station Chohla Sahib, FIR No.76 dated 13.08.2015, under Section 15, 18, 21, 22 NDPS Act, Police Station Chohla Sahib, FIR No.20 dated, 06.04.2014, under Section 61 Excise Act, Police Station Chohla Sahib, FIR No.116, dated 30.04.2018, under Section 174-A IPC, Police Station, Sadar Tarn Taran, FIR No.04, dated 17.01.2021, under Section 21 NDPS Act, Police Station, Chohla Sahib, added Section 29 NDPS Act vide Rapat No.27, FIR No.44, dated 03.04.2013, under Section 411, 414, 489-A, B, C IPC, 15,18,21,22 NDPS Act, Section 25 Arms Act, Section 3.34 I. P. Act, Section 14, F. Act, Police Station Sarhali, FIR No.61 dated 08.06.2021, under Section 21 NDPS Act, Police Station Chohla Sahib, stands registered against the applicant. Further it is submitted that since commercial quantity of heroin has been recovered in this case FIR from the conscious possession of applicant, the provisions of Section 37 of the NDPS Act as such are also attracted which curtail the powers of the court to grant bail to the accused/applicant.

4. I have considered the contentions raised by both the sides. As per prosecution version, 280 grams of heroin has been recovered from the conscious possession of the applicant in presence of Gazetted Officer. Applicant earlier also is found involved in number of FIRs mentioned above including 6 FIRs under the NDPS Act. Applicant also has remained proclaimed offender in at least 6 FIRs

registered against him. But neither in the bail application nor in the affidavit attached with the bail application, has applicant disclosed the above mentioned material facts. Apparently these facts have been concealed intentionally with a view of get relief of regular bail. But the quantity of heroin recovered from the applicant, herein, falls under the commercial quantity segment and squarely the provisions of Section 37 of the NDPS Act as such are attracted. Thus, no ground is made out to release the applicant on bail. Present bail application, being devoid of any merit, is hereby dismissed. However, it is made clear that observation made herein above shall not be construed as an expression on the merits of the main case. Papers be tagged with the main file.

3. The main reason for declining the relief of regular bail by the learned trial Court concerned was that the alleged recovery of contraband falls within the category of commercial quantity, as well as the antecedents of the petitioner, who was found to be involved in number of other criminal matter, which includes the cases under the provisions of NDPS Act also. In fact, the petitioner is involved in total 17 criminal cases.

4. On dated 27.07.2023, it was informed to this Court by learned counsel for the petitioner that the petitioner is a patient of HIV positive, and he is not in a condition to be kept behind the bars, as he needs regular assistance and medical interventions. This Court called for the medical status report pertaining to the petitioner, and in compliance thereof, a status report dated 10.08.2023 was filed on 11.08.2023. The relevant part of the status report reads as under:-

“3. It is respectfully submitted that inmate Sukhchain Singh S/o Dalip Singh 38 yrs male is presently conscious co-operative well oriented to time place and person and Patient is in ambulatory condition. He is known case of HCV+Ve and HIV +Ve.

As per previous Medical record of P.G.I Chandigarh on dated 17.07.2017 he was operated for peripheral vascular obstruction (i.e. clot obstructed the Blood vessel) Now today he was complaining that mild swelling occurs at the same region so we have referred him to G.N.D.H Amritsar for his colour Doppler scan for arteries and veins (Blood Vessels) on duty medical officer of

Guru Nanak Dev Hospital Amritsar checked a patient and they have given scheduled time on 11.08.2023 at 09:00 AM for Colour Doppler scan in Guru Nanak Dev Hospital Amritsar. As final report from the Guru Nanak Medical College Amritsar will be received then needful, be done accordingly. (Copy of Medical report is attached herewith as Annexure R-1)."

5. Further, today again a fresh medical status report dated 14.01.2024, by way of an affidavit of Rahul Raja, Additional Superintendent, Central Jail, Shri Goindwal Sahib, has been filed, which is taken on record.

6. It reveals that the petitioner has again developed some more complications, and the relevant extract of the affidavit (*supra*) reads as under:

"3. That it is submitted that inmate Sukhchain Singh s/o Dalip Singh aged 35 years Central Jail Sh. Goindwal Sahib as a known case of Peripheral Arterial Diseases (Severe Claudication) was referred to PGIMER Chandigarh on dated 18.12.2023 by the Medical Officer of this Jail for a Vascular Surgery opinion and further management as appointment given by the Doctors of PGIMER Chandigarh. Patient was examined in Surgery OPD of PGIMER Chandigarh on dated 18.12.2023 vide CR No. 20230498994. CT Angiography (Abdomen and B/L Lower Limb) of this patient was done on 18.12.2023. CT Angiography report which was received on 14.01.2024 revealed the following findings:

- The infrarenal abdominal aorta, bilateral common, right external and internal iliac vessel-course, caliber and opacification.
- Complete non-opacification of Left EIA, CFA and proximal SFA with distal reformation at level of left distal SFA through collaterals.
- Right CFA, SFA, DFA shows normal course calibre and contrast opacification.
- Right popliteal artery and its branches including PTA and peroneal arteries show normal course, calibre and contrast opacification.
- Right ATA is attenuated in calibre in mid and distal part with faint contrast opacification.

Left Side:

- Left CFA, Proximal SFA are not opacified with reformation at level of distal SFA, DFA is seen formed by the collaterals.
- Left popliteal artery and its branches including ATA, PTA and peroneal arteries shows normal calibre and contrast opacification.

- Few other tortuous channels are noted in the subcutaneous plane of medial aspect of proximal thigh.
- Visualised abdominal organs are normal.
- Visualised bones are normal.

Impression

- Complete non-opacification of left EIA, CFA and proximal SFA with Distal reformation as described. Umar
- Attenuated Right ATA in Mid and Distal Part.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

7. Learned counsel for the petitioner submits that apart from the medical condition of the present petitioner, who is in advance stage of HIV positive, on merits also the petitioner deserves the grant of regular bail.

He further submits that the petitioner was arrested way back on dated 08.06.2021, whereas, the recovery is of 280 grams of heroin, which is marginally above the commercial quantity as prescribed under the schedule.

He further submits that the trial is still undergoing and it may take a long time to conclude.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. *Per contra* learned State counsel opposes the asked for relief on the ground that the petitioner is a habitual offender, and he is involved in many other cases.

ANALYSIS

9. “*Bail is the Rule and Jail is an Exception*”. This basic principle of criminal jurisprudence was laid down by the Hon’ble

Supreme Court, way back in 1978, in its landmark judgment titled “***State of Rajasthan V. Balchand alias Baliay***”, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

10. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

11. In “***Nikesh Tarachand Shah V. Union of India***”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or

refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the

exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular

case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

12. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused

until he is found guilty and the sanctity of individual liberty.

13. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

14. Be that as it may, though the antecedents of the petitioner does not accredit him to be released on regular bail, but considering the fact that the recovery of contraband is just marginally above the commercial quantity, and petitioner is behind the bars since 08.06.2021, coupled with the fact that the petitioner on regular basis requires medical attention being a HIV positive patient, which is supported by the medical status report (*supra*), this Court, taking the lenient and sympathetic view, deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail, on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

January 15, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No