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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34430-2024
DATE OF DECISION: 02.08.2024

ASHISH KUMAR ALIAS ASHU ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

SANDEEP MOUDGIL, J (ORAL)

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 case FIR No.671, dated 29.07.2022, registered under Sections 22(C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 27-A and 29 of NDPS Act added later on) at Police Station City Karnal, District Karnal.

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

‘Copy of tehrir is attached. To the SHO Police Station Karnal Jai hind. Today on 28.07.2022 I SI along with SI Krishan Kumar 1191/KNL., HC Harpreet Singh 1067/KKR, EASI Surender Singh 799/Jind along with Govt. Vehicle No. HR05GV- 9783 make Scorpio, whose driver is Constable Ajay Kumar 799/KNL in respect of investigation in FIR No. 293 dated 24.07.2022 under Section 22-61-85 NDPS Act took the accused Amit son of Prem Singh resident of Village Sanoli Police Station Sanoli District Panipat presently tenant Gali No. 3 Shanti Nagar, Police Station Ram Nagar, District Karnal was taken on Police remand for 3 days from Hon'ble Court and after putting accused Sagar son of Vijay Kumar resident of Gali No. 6 Shiv



Colony, District Karnal behind bars, proceeded for the search of Deepak Gujral and Kanhaiya Saini resident of Afgana Mohalla Karaina District Shamli, when reached near Nirankar Chowk railway Road Karnal then accused Amit Kumar told me SI that 2/3 days ago I from my mobile No. 9996741241 called Deepak Gujral resident of Afganana Mohalla Mobile No. 9520740983 and ordered 2400 intoxicating tablets of Alperamed 0:50 MG without Bill. Deepak told me that on 29.07.2022 Kanhaiya Saini resident of Afgana Mohalla Kairana, District Shamli will come in the morning time in the area of Karnal to supply the Intoxicating medicines. I will also send your order through Kanhaiya Saini. Kanhaiya Saini will . meet you behind old Bus Stand Karnal at the tea shop. You after taking VIKRAM SINGH intoxicating medicines from Kanhaiya transfer money to me through Google. If Kanhaiya is apprehended after searching behind old Bus Stand, his search be conducted, then heavy quantity of intoxicating medicines can be recovered from him. That the information is correct and believable. On which after preparing Notice under Section 42 of NDPS Act was sent to the Police station City Karnal for information through EASI Surender Singh 799/Jind. On finding the offence under Section 22-61-25 NDPS act has been committed. I SI by writing request for registration of case sent to the police Station City Karnal through Ajay Kumar 799/KNL. After registration of case number be informed. Report of the instant case be sent to the higher officers. I SI is complainant in the instant case. Therefore, for further investigation of the instant case another investigation officer be sent to the spot. I SI along with fellow officers along with accused Amit above along with Government vehicle are proceeding for old Bus Stand Karnal. Today:-Nirankari Chowk Railway Road, Karnal Balwan Singh SI.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner has been arrayed as an accused only on the basis of disclosure statement of co-accused-Deepak who was nominated in the disclosure statement of main accused-Kanhaiya Saini. He has further argued that no direct recovery has been effected from the petitioner. The petitioner has been in custody since 12.01.2023. He submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial will take long time as out of total 34 prosecution witnesses, none has been examined till date.

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 1 year, 6 months and 17 days.

Learned State Counsel submits on instructions from SI Jaipal opposes the prayer for grant of regular bail on the ground that the petitioner is also involved in one more FIR i.e. FIR No. 293/2022 dated 24.07.2022, registered under Sections 22/29/61/85 of the NDPS Act, at P.S. Ram Nagar, Karnal. He informs the Court that in the present case challan stands presented on 24.01.2023 and charges stands framed on 21.07.2023 and out of 34 prosecution witnesses, none has been examined.



4. Analysis

From the above case it can be culled out the petitioner has neither been nominated in the FIR nor arrested from the spot and has already suffered sufficient period in custody i.e. 1 year, 6 month and 17 days and as 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 24.01.2023 and charges stands framed on 21.07.2023 and out of 34 prosecution witnesses, none has 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.

Reliance can be made 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 involvement of the petitioner in another FIR is concerned, the petitioner is on bail in that FIR and in this regard 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 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

02.08.2024
anuradha

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