



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203 CRM-M-34797-2024 (O&M)
DATE OF DECISION: 23.08.2024

BALVIR SINGH ALIAS BALVEER SINGH
...PETITIONER
Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kashav Chadha, Advocate
Legal Aid Counsel for the petitioner(s).

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 second time seeking the concession of regular bail for the petitioner in FIR No. 197, dated 16.11.2021, under Sections 15 of NDPS Act, 1985 (Section 29 of the NDPS Act and Sections 192, 207 of Motor Vehicle Act, 1988 added later on) registered at Police Station STF, Phase-4, District SAS Nagar, Mohali.

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

‘Copy of ruqa, SHO, P.S. STF, Phase-4, SAS Nagar, Jai Hind. Today, I, IS alongwith Assistant SHO Jasvir Singh 512/Insp., Constable Sukhveer Singh 1732/Sangrur, SC Tajinder Singh 36/Sangrur, SC Amandeep Singh 1805/Sangrur by Government vehicle no. PB-65-AN-6791, Bolero Camper, driven by Sepoy Jagdish Kumar 3644/Patiala alongwith laptop, printer and inverter,



big battery in relation to checking of drug smuggler were present at RD460 Khanori and at about 3:00 p.m., secret informer informed me that Beant Singh son of Gurmeet Singh, resident of Kalwanu, P.S. Ghagga, District Patiala, Avtar Singh @ Tari son of Harnek Singh, resident of Manak Majra, Police Station Amargarh, District Malerkotla, Manpreet Singh son of Tarsem Singh, resident of Samora, Police Station Dirba, District Sangrur, Balvir Singh son of Mahender Singh, resident of Naraingarh, P.S. Sadar Khanna, District Ludhiana, are doing business of selling poppy husk after bringing from other states. Today also carrying in truck no. HR-65-9507 Marka Bharat Benz having poppy husk in huge quantity going towards Patran via Jind, Narwana Khanori, Truck is driven by Avtar Singh @ Tari and with him Beant Singh is sitting in truck and one car no. HR-41-J-2324 Mark KWID white color, piloting the truck. If immediately nakabandi be done in planned manner then they will be apprehended with huge quantity of poppy husk. Information is believable and trustworthy. Beant, Avtar Singh, Manpreet Singh and Balvir Singh abovesaid in connivance with each other bring poppy husk in huge quantity from other states and sell in Punjab and therefore committed offence under Section 15 of NDPS Act. Ruqa for registering case against Beant Singh son of Gurmeet Singh, resident of Kalwanu, P.S. Ghagga, District Patiala, Avtar Singh @ Tari son of Harnek Singh, resident of Manak Majra, Police Station Amargarh, District Malerkotia, Manpreet Singh son of Tarsem Singh, resident of Samora, Police Station Dirba, District Sangrur, Balvir Singh son of Mahinder Singh, resident of Naraingarh, P.S. Sadar Khanna, District Ludhiana by Senior Sepoy Amandeep Singh 1805/Sangrur. Case be registered, number be informed. Officer and control room be informed. As per the order of Hon'ble Supreme Court SHO Jagdev Singh 241/Sangrur be informed for further investigation. I SI alongwith other officials are leaving for nakabandi. At 460 Khanori at 4:00 p.m'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case and the instant FIR is based on a concocted story. He submits that no recovery has been effected from the car Mark KWID bearing No. HR-41J-2324 in which the petitioner was allegedly shown to be coming and as per the version of the prosecution, recovery is alleged to be effected from a Truck bearing No. HR-65-9507 but the petitioner is neither the owner nor the driver of the aforementioned truck. He further submits that the petitioner never accompanied the co-accused in the truck from which the alleged recovery of 1600 kg of poppy husk was recovered. The contention is that the petitioner is in custody for 2 years and 9 months and the truck driver namely Beant Singh has already been granted the concession of regular bail by this Court vide order dated 25.04.2024 passed in ***CRM-M-18845-2024***. He lastly contends that no fruitful purpose would be served by further keeping the petitioner behind the bars as the conclusion of trial would take considerable amount of time as out of total 21 Prosecution Witnesses, 4 PWs have been given up and only 3 PWs have been examined and 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 filed the custody certificate of the petitioner, which is taken on record. According to the same, the petitioner is behind bars for last 2 years and 9 months.

Learned State Counsel on instructions from Investigating



Officer opposes the prayer for grant of regular bail on the ground that the petitioner is involved in one more FIR bearing No. 38/2017 dated 14.04.2017 under Section 15 of the The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at P.S. Moonak, therefore, is a habitual offender, but is not in a position to controvert the submissions as made by the counsel for petitioner. He informs the Court that in the instant FIR challan stands presented on 11.05.2022 and charges stand framed on 05.11.2022.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 2 years and 9 months and the driver of the truck from which the alleged contraband was recovered has been granted concession of regular bail added with the fact that the petitioner is neither the owner nor the driver of that truck and nothing is to be recovered from the petitioner. Also 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 11.05.2022 and charges stands framed on 05.11.2022, out of 21 prosecution witnesses, only 3 have been examined yet which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

Hon'ble the Supreme Court in its latest judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571', observed as under :-



“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

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 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.

As far as the pendency of other case and involvement of the petitioner in other FIR is concerned, the petitioner is on bail in that FIR and further, 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 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

23.08.2024
anuradha

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