



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35521-2024

Date of Decision: July 31, 2024

HARPAL SINGH

....Petitioner

VERSUS

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yajur Sharma, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

Relief Sought

1. 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.200 dated 15.10.2023, under Sections 21, 23, 25, 27-A, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Gharinda, District Amritsar Rural.
2. Prosecution story set up in the present case as per the version in the FIR reads as under:-

‘To Head Munshi, Police station Gharinda, Jai Hind, today I SI/ SHO along with SI Dilbagh Singh no.44/ ASR-R, SI Rachpal Singh 852/ ASR-R, ASI Hardip Singh 413/ ASR R, S/CT Harpreet Singh 134 were present on government vehicle which was driven by CT Rupinderjit Singh no. 1953/ ASR-R along with laptop, printer kit at Bus stand Hoshiarpur Nagar for the patrolling and search of anti-social elements. That the special informer came and



informed that Prince Pal Singh son of Sahib Singh resident of Manakpura, Rahuldeep Singh son of Gurwinder Singh resident of Manakpura and Harpal Singh son of Major Singh resident of Manakpura, P.S. Sarai Amanat Khan, District Tarn Taran are having relations with Pakistani smugglers. That all three of them in connivance with each other are doing the business of smuggling heroin from Pakistan and selling it to their accomplice smugglers in India and today Prince Pal Singh, Rahuldeep Singh and Harpal Singh on motorcycle Mark Platina bearing registration no. PB02CM-3506 colour black are coming to sell heroin to their accomplice smugglers from Rakh Bhusiya on road towards village Chiche. If they are apprehended and searched then heroin can be recovered. That at this time ASI Karambir Singh no. 874/ ASR-R along with C-2 Gurpreet Singh no. 1864, C2 Gurjot Singh no. 435, C Sawabir Singh no. 1938, S-Ct Davinder Singh 1385, S/CT Paramjit Singh no. 585, team of Special Cell, ASR-R on government vehicle met who were also joined in the police party and information of the special informer was true and reliable, therefore, I SI/ SHO after briefing the fellow colleagues laid the naka/ barricading at Rakh Pusiya road little ahead of village Chiche and started doing checking of the vehicles, then after some time three young men on motorcycle were seen coming from the side of village Rakh Bhusiya. That when I SI/SHO signalled them to stop for checking, then the person who was driving the motorcycle tried to run after turning around the motorcycle from naka/ barricading, then I SI/ SHO with the help of fellow colleagues apprehended the three young men and asked about their name and address, on which driver of the motorcycle disclosed his name as Prince Pal Singh son of Sahib Singh resident of Manakpura and the pillion rider who was sitting behind him told his name as Rahuldeep Singh son of Gurwinder singh resident of village Manakpura and the last pillion rider told his name as Harpal Singh son of Major Singh resident of village Manakpura. Thereafter, I SI/ SHO after informing three young men about my name, rank and posting told them that I have suspicion that you are having heroin, therefore you and your motorcycle is to be searched.



However, you have legal right that you can get your personal search from Gazetted officer or Magistrate. On which above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh told I SI/ SHO that they want to get their personal search conducted from some Gazetted officer of the Police, on which three non-consent memos were separately prepared, memos were signed by the witnesses and Princepal Singh, Rahuldeep Singh and Harpal Singh also signed. Then I SI/ SHO informed Sh. Gurinder Pal Singh PPS, Deputy. Superintendent of Police, Sub Division Atari, District Amritsar Rural about the situation on phone and requested him to reach on the spot. That at around 3.15 pm Sh. Gurinder Pal Singh PPS, Deputy Superintendent of Police, Sub Division Attari, District Amritsar Rural along with personal staff reached on the spot on government vehicle, who informed above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh about his name rank and told them that I am wearing the dress and nameplate of my name is also there and I am a Gazetted officer of Punjab Police and is posted at Sub-Division Attari, I have suspicion that you are carrying heroin. Therefore, your personal search and search of your motorcycle is to be conducted but you have a legal right to conduct your search from me or from some other Gazetted officer or from Magistrate, whom I can arrange. On which the above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh told DSP sahib that we have full faith on you, you can conduct our personal search and search of our motorcycle, on which different consent memos of above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh were prepared, consent memos were signed by the witnesses, and above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh also signed the consent memo. Before conducting the search of above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh, attempt was made to join public witness in the Police party but no passer by joined the police party due to their personal reasons. Then on the instructions of DSP Sahib, I SI/ SHO conducted the search one by one of the above mentioned Princepal Singh, Rahuldeep Singh and Harpal Singh and motorcycle



make Platina bearing registration no. PB02CM-3506, colour black. Then firstly the search of Rahuldeep Singh son of Gurwinder Singh resident of village Manakpura was conducted and from the right pocket of his pant heroin in black polythene was recovered, recovered heroin was weighed on electronic weighing machine at the spot and which was found to be 500 grams of heroin along with black polythene. The parcel was prepared by putting 500 gram heroin along with black polythene in plastic box. Then I sealed the parcel with my stamp AK' and DSP sealed the parcel with his seal 'GPS'. The stamp after use was handed over to SI Rashpal Singh 852/ ASR-R and DSP Sahib kept his stamp with him after using it. That above parcel was taken into police possession vide separate recovery memo and from the personal search (jama talashi) of Rahuldeep Singh, one mobile phone made Samsung coloured blue and two Indian currency notes of Rs. 500/500 each, total Rs. 1000/- was recovered from the pocket of his shirt, which were taken into police possession vide separate recovery memo and from the search of Princepal Singh son of Sahib Singh resident of Manakpura, one mobile phone made Vivo coloured blue and Rs. 500 Indian currency note were recovered from his shirt, which were taken into police possession vide separate recovery memo. Then from the search of Harpal Singh son of Major Singh resident of village Manakpura, one mobile phone made Vivo coloured sky blue and Rs. 500 Indian currency note were recovered from his shirt, which were taken into police possession vide separate recovery memo. Recovered motorcycle mark Platina bearing registration no. PB02-CM 3506 colour black was taken into police possession vide separate memo as evidence.

That above mentioned accused Princepal Singh, Rahuldeep Singh and Harpal Singh by keeping heroin in their possession have committed an offence under Section 21/23/25/29/61- 85 of NDPS Act. On which ruqa is written at the spot and is being sent to the Police station Gharinda for registration of FIR through S/ Ct Harpreet Singh 134. FIR number be informed after registration of FIR. Special reports be



prepared and be sent to the Illaqa Magistrate and high officials and control room be informed through wireless. I SI/ SHO along with fellow officials is busy in investigation at the spot. Today at the area of village Chicha at around 4.15 pm. Sd/- Arjun Kumar, SI/ SHO, Police station Gharinda, District Amritsar-Rural, dated 15.10.23.'

3. **Contentions**

On behalf of the petitioner/s

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. No recovery has been effected from the conscious possession of the petitioner. He is neither the owner of the offending motorcycle nor was driving the same, at the time of alleged recovery. He further submits that co-accused namely Kiranbir Singh has also been granted the concession of regular bail by this Court vide order dated 11.07.2024 in CRM-M-25763-2024. He submits that the petitioner is in custody since 15.10.2023, challan stands presented on 10.04.2024 and there are total 14 prosecution witnesses to be examined, therefore, trial is likely to take long time to conclude and therefore, prays for concession of bail.

Notice of motion.

On the asking of Court, 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 last 9 months and 9 days.

On behalf of the State

Learned State Counsel opposes the prayer for grant of bail on the ground that petitioner has not yet undergone sufficient custody in the



present case but he is not in a position to controvert the submissions made by counsel for the petitioner.

4. **Analysis**

From the above case it can be culled out that the role attributed to the petitioner is that on the basis of secret information, petitioner and his co-accused were apprehended while they were on a motor cycle and from search total recovery of 850 grams of heroin was effected from the possession of the petitioner and his co-accused, however, the said fact has been controverted by the learned counsel for the petitioner stating that nothing has been recovered from their conscious possession, moreso, the petitioner is behind the bars for last 09 months and 09 days; the petitioner is at parity with the other co-accused, namely, Kiranbir Singh, who has been granted the concession of regular bail by this Court vide Annexure P-5 added with the fact that challan stands presented on 10.04.2024, and out of total 14 prosecution witnesses, none has been examined till date, which is suffice enough for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained 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.

5. **DECISION:**

In view of the 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.

In the afore-said terms, the present petition is hereby allowed.

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

(SANDEEP MOUDGIL)
JUDGE

31.07.2024
Sangeeta

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