

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

216

CRM-M-35218-2024
DATE OF DECISION: 30.07.2024

SURJEET SINGH **...PETITIONER**

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. K.S. Sidhu, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

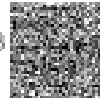
SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

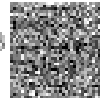
The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No.156 dated 06.08.2023, under Sections 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (later on added Section 29 of the NDPS Act vide DDR No. 18 dated 09.08.2023), registered at Police Station Gurharsahai, District Ferozepur.

2. The above-mentioned FIR is reproduced below :-

‘Station House Officer, Police Station Guruaharsahai, Jai Hind. Today Myself St alongwith ASI Mahinder Singh No. 898/FZR, SC Manjeet Singh No. 1447/FZR, Ct. Devpreet No. 838/FZR, PHG Jagjeet Singh No. 5425 were on government vehicle bearing No. PB-05-AB-0852, whose driver is PHG Maninder Kumar No. 5369, were on patrolling and in search of bad elements departed to Local Area, Guruaharsahai etc., While patrolling, when police party reached



near Bair Sahib Gurudwara Guruaharsahai, secret informer gave gesture and got stopped the car and informed myself that Lakhwinder Kumar @ Lakhi S/O Gurbans Lal R/O Haddian Wali Street Mothan Wala Road, Guruaharsahai, who is habitual to bring intoxicant tablets from outside and to sell the same at Guruaharsahai. Today also, he has brought intoxicant tablets and is sitting at graveyard, Guruaharsahai and is waiting for his customers to sell the same to his customers. If raid be conducted now, he can be nabbed alongwith intoxicant substances. As the information is reliable and trustworthy, Lakhwinder Singh @Lakhi S/O Gurbans Singh R/O Handian Wali Street Mothan Wala Road Guruaharsahai has committed offence U/S 22/61/85 of NDPS Act by keeping intoxicant tablets in his possession. Upon this ruqa has been prepared against Lakhwinder Kumar @ Lakhi S/O Gurbans Singh R/O Handian Wali Street Mothan Wala Road Guruaharsahai and is being sent to the police station through PHG Jagjit Singh NO. 5425 for the registration of FIR. FIR be registered and number of the FIR be informed. Special reports be issued. PCR Ferozepur be informed. Myself SI alongwith police party departed to the place of disclosed by the secret informer for conducting raid. Myself SI was already having investigation bag and laptop, printer. Sd/ Gurdeep Kaur SI PS Guruaharsahai Dated 06.08.2023. In the area of near Bair Sahib Gurudwara, Guruaharsahai at 05:30 PM. From Police station: upon receipt of above said ruqa in the police station, above said FIR has been got registered under above said offences against above said accused. Copy of the FIR alongwith ruqa has been sent to spot through same PHG to same SI. Special reports be issued and sent to Duty Magistrate, Guruaharsahai and Senior Officers through ASI Jagsir Singh 1228/FZR. PCR/FZR is being informed through W/M.



3. **Arguments addressed by counsel for petitioner/s**

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He has been named in this FIR only on the basis of disclosure statement of the co-accused and nothing has been recovered from the petitioner. He has been in custody since 30.02.2024. He further submits that in the instant FIR challan has been presented on 15.07.2024 and out of 10 Prosecution witnesses, none has been examined till date, therefore, has argued that trial will take long time to conclude and on that ground prays for concession of bail.

Notice of motion.

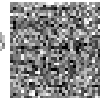
On the asking of Court, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 3 months and 28 days.

4. **Submissions by the State**

Learned State Counsel submits on instructions from Investigating Officer opposes the prayer for grant of bail on the ground that the petitioner is involved in other FIRs also but is not in a position to controvert the submissions made by counsel for the petitioner.

5. **Obiter Dicta**

From the above case it can be culled out the petitioner has already been in custody for last 3 months and 2 days and as per the principle of the criminal jurisprudence, no one should be considered as

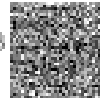


guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact after challan stands presented on 15.07.2024, out of 10 prosecution witnesses, none has been examined so far and detaining the petitioner behind 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 judgement of Apex Court in "***Dataram Singh vs. State of Uttar Pradesh and another***;; (2018) 3 SCC 22".

Even 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 :*

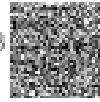
"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate 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



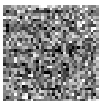
court also observed that the Right to Speedy Trial from the point of view of the accused are:

- 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, 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.

6. 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.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

30.07.2024
anuradha

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