



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35918-2024
DECIDED ON: 01.08.2024

TALIM

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saleem Ahmed, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.115, dated 01.03.2024, under Sections 20 & 29 of the NDPS Act, 1985, registered at Police Station Sector 8, Faridabad, District Faridabad.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“To SHO, Police Station Sector-8, Faridabad Jai Hind. Today, I, SI along with HC Ramesh Kumar 1703, HC Rohit Kumar 2578 were present for crime and patrolling duty in private vehicle at Mathura, Delhi Road, Bata Chowk, Faridabad. That secret informer informed that Tasleem son of Idrish resident of U.P. at present tenant at Ram Nagar Colony, Faridabad is in the business of selling contraband Ganja. That Talim would come from

Ramnagar Colony to sell contraband by filling the same into a bag. If Nakabandi be conducted at Bata Bridge towards Delhi side near Ram Nagar Colony then Talim might be apprehended along with Ganja. That believing upon the information I, ASI prepared a notice U/s 42 NDPC Act and sent HC Rohit Kumar 2578 to police station, Sector-8 Faridabad for taking permission for raid and HC Rohit Kumar returned back after 25 minutes and handed over to me ASI the permission to raid and to register rapt thereafter. That I, ASI informed the fellow officials regarding the situation and by taking the secrete informer, we just reached at the rough way of Ramnagar Colony, that one young person was seen to come by taking the bag on his shoulder and by seeing the police party in front of him, he turned back and started walking speedily. At the same time, secrete informer told by signalling that the boy who turned back having bag, he is the Talim. That after leaving the secrete informer, I, ASI with the help of fellow officials apprehended the person along with bag and on telling the name and address, he told his name and address as Talim son of Idrish resident of House No.284, behind the Sonkiya Mil Krishna Vihar Colony, Kosi Kalan, Police Station Kosi District Mathura Uttar Pardesh presently tenant at House of Dinesh Nagar, Ram Nagar Colony, Sector-8, Faridabad aged 23 years. On having doubts of Ganja in black and orange bag carry by apprehended person, Talik, I ASI handed over the notice 50 NDPS to the Talim and told that you have the right under NDPS Act that you can search you and your bag from any gazette officer or Duty Magistrate and you give your reply in writing regarding search. On which Talim above has given in writing to search him and his bag from Duty Magistrate. On which I, ASI informed Shri Gaurav Jolani, Excise Taxation Officer (EAST)

Faridabad to reach at the spot from my mobile no. 9812254236 to his mobile no. 7838974976 and after about 25 minutes Duty Magistrate Shri Gaurave Jolai, Exercise Taxation Officer (EAST) reached at the spot, who enquired the Talim and seen the Notice U/s 50 NDPS Act, thereafter Duty Magistrate searched me ASI and fellow officials and directed me to search Talim and bag. That according to the directions of Duty Magistrate, search of Talim and bag was got done and during search, contraband Ganja was found in two polythene placed in the bag placed at the shoulder of Talim. Duty Magistrate has asked Talik regarding license of contraband Ganja and he could not submit any license permit and to measure the contraband Ganja with the electric weighing machine placed in the vehicle, total weight of Ganja was found 4 Kg. 635 gram, Palanda of which was prepared by putting the same in the polythene and further placed in the bag and stamped with MS stamp. After using the stamp, the same was handed over to witness HC Rohit Kumar 2578. Duty Magistrate stamped the Palanda with R\$ stamp and after using the stamp, he kept stamp with him and thereafter recovered Ganja was taken into the possession of the police as evidence. Accused and witness appended their signatures on the recovery memo. Passer-by was asked to be witness but all went away by showing their reasonable causes. That accused by keeping the contraband Ganja with him without license permit has committed offence U/s 20-61-85 NDPS Act therefore HC Ramesh Kumar 1703 is sending to the police station, sector-8 for registration of FIR. After registration of FIR number be informed and another IO be sent at the spot. 1, ASI along with officials, recovered material and accused is present at the spot. At Khali Madan, Ram Nagar Colony, Faridabad.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the alleged contraband i.e. 4 kg 635 gms of ganja was recovered from the present petitioner, which is of non-commercial quantity. He further contends that the co-accused of the petitioner, namely, Arjun has been granted the concession of regular bail by this Court vide order dated 12.07.2024 passed in CRM-M-32139-2024.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the contraband has been recovered from the conscious possession of the petitioner.

4. **Analysis**

From the above case it can be culled out that the role attributed to the petitioner is that recovery of non-commercial quantity of contraband was effected from the present petitioner, moreso, the petitioner is behind the bars for last 05 months and 01 day; challan stands presented on 25.04.2024; charges are yet to be framed and the examination of total 16 prosecution witnesses are yet to commence, 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

01.08.2024
Poonam Negi

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