



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35797-2024

DECIDED ON: 04.12.2024

BALJINDER SINGH @ BITTU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vinay Kumar Gupta, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.68, dated 10.03.2023, under Sections 21, 22, 29 of NDPS Act, registered at Police Station City Moga, District Moga.

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

SHO P.S. City Moga. Today I ASI along with C Paramjit Singh 358/Moga, HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, C Baltej Singh No. 1142/Moga, on our Govt. vehicle bearing no. PB-29-H-8310 which was driven by C Paramjit Singh 358/Moga for checking of suspicious persons in area of PS Kot-Ise-Khan and PS City Moga. At about 4:10 pm when police party was coming from Lohara-Duneke bypass towards city Moga. Then near T-point on Moga Amritsar road

two persons on Motorcycle were seen coming from the brick road, who on seeing the police party they got perplexed and tried to escape from the spot but suddenly their motorcycle stopped, then I ASI on the basis of suspicion stopped our vehicle and apprehended both the persons who were on the black silver Hero Splender Motorcycle bearing Reg no. PB 29 AC 6356 and enquired about their name and address. Driver of the motorcycle identified himself as Baljinder Singh @ Bittu s/o Jagdev Singh s/o Surjan Singh r/o Nahar Singh Road ,Landeke, District Moga and pillion rider identified himself as Amarjeet Sing @ Lavi s/o Gurbaksh Singh s/o Sadhu singh r/o Nahar Singh Road, Landeke, District Moga. Then I ASI tried to join independent witness but none joined then IASI identified myself to the driver of motorcycle Baljinder Singh that I am ASI Harbans Singh 823/Moga posted at Anti Narcotic Drug Cell Moga. I have suspicion that you possess some intoxicated substance, possession of which is an offence, so I want to search you and your abovesaid motorcycle. But you have got the right to get yourself searched in presence of a Magistrate or a Gazetteed Officer, who may be called on the spot or you may be taken to them. On this Baljinder Singh @ Bittu reposed his confidence upon me and said that I have confidence on you and you can search me and my motorcycle upon which I prepared a notice u/s 50(1) of NDPS Act. Baljinder Singh @ Bittu signed the same in Punjabi Language, HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, also signed the same as witnesses. In the same manner I ASI identified myself to the pillion rider of motorcycle Amarjeet Singh @ Lavi that I am ASI Harbans Singh 823/Moga posted at Anti Narcotic Drug Cell Moga. I have suspicion that you possess some intoxicated substance, possession of which is an offence, so I want to search you and your abovesaid motorcycle. But you have got the right to get yourself searched in presence of a Magistrate or a Gazetteed Officer, who may be called on the spot or you may

be taken to them. On this Amarjeet Singh @ Lavi reposed his confidence upon me and said that I have confidence on you and you can search me and my motorcycle upon which I prepared a notice u/s 50(1) of NDPS Act. Amarjeet Singh a Lavi signed the same in Punjabi Language, HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, also signed the same as witnesses. Then I ASI searched the motorcycle possessed by Baljinder Singh and Amarjeet Singh then a black colored polythene was recovered from the plastic box placed above the headlight of the motorcycle. When the same was opened and checked, Heroine in the transparent polythene and some loose intoxicant orange colored tablets were recovered. When I ASI weigh the Heroine with computer scale, it came out to be 10 gms. Then I ASI put 10 gm Heroine in a plastic box and prepared parcel of cloth and sealed the same with my seal bearing impression HS. Then I ASI counted the orange colored intoxicant tablets which came out to be 120 in count. The said tablets put in the abovesaid black polythene and prepared the parcel and sealed the same with my seal bearing impression HS. Then I handed over my seal to HC Harman Singh having 10 gm Heroine and a parcel having 120 intoxicated tablets along with seal sample and Hero Splender Motorcycle bearing Reg no. PB 29 AC 6356. Recovery memo was signed by HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, as witnesses. On personal search of Baljinder Singh @ Bittu, 1 currency note of Rs 200 was recovered from the left pocket of his lower, which was taken into police custody vide personal search memo. Baljinder Singh a Bittu signed the same in Punjabi Language, HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, also signed the same as witnesses. On personal search of Amarjeet Singh @ Lavi, 3 currency notes of R\$ 100 each total 300 was recovered from the left pocket of his jean, which was taken into police custody vide personal search memo. Amarjeet Singh @ Lavi signed the same

in Punjabi Language, HC Harman Singh No. 1143/Moga, HC Inderveer Singh 1108/Moga, also signed the same as witnesses. In this way above said Baljinder Singh @ Bittu and Amarjeet Singh @ Lavi by possessing 10 gms of Heroine and 120 intoxicant tablets have committed offence u/s 21,22 61 85 NDPS Act. Thus rug is sent through C. Paramjeet Singh 358 Moga to Police Station for registration of the case against Baljinder Singh @ Bittu s/o Jagdev Singh s/o Surjan Singh r/o Nahar Singh Road ,Landeke, District Moga and Amarjeet Singh @ Lavi s/o Gurbaksh Singh s/o Sadhu singh r/o Nahar Singh Road, Landeke, District Moga. I ASI alongwith other officials are present at the spot, time 6.35 pm.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the alleged recovery of 10 grams of heroin and 120 loose intoxicant tablets were effected from the alleged motorcycle, which was being driven by the present petitioner Baljinder Singh @ Bittu, with his co-accused Amarjit Singh @ Lovi as the pillion rider. It has been contended on behalf of the petitioner that nothing has been recovered from the conscious possession of the petitioner.

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 alleged recovery was effected from the present petitioner and his co-accused Amarjit Singh @ Lovi. He further contends that the petitioner is involved in two more cases meaning thereby he is a habitual offender.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 08 months and 12 days for which the petitioner has suffered incarceration; nothing has been recovered from the conscious possession of the petitioner in addition to the fact that investigation is complete, challan stands presented to Court on 30.05.2023, charges have been framed on 07.07.2023 and out of total 18 prosecution witnesses, only two witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 basic and fundamental 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 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 concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby 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.

04.12.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*