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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-36376-2024

DATE OF DECISION: 06.08.2024

IKBAL ALIAS KRANTI

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohit Chaudhary, Advocate for the petitioner.  
Mr. Chetan Sharma, DAG, Haryana.

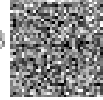
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SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

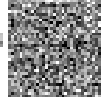
The jurisdiction of this Court under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023 has been invoked for the grant of regular bail to the petitioner in case FIR No. 46, dated 09.02.2022, under Section 20(B)(ii)(C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Punhana, Police Station District Nuh (Mewat).

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

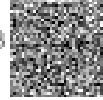
*'To, The SHO Sahib, Police Station Punhana Jai Hind. Today I ASI alongwith C. Javed No. 337/Nuh, C. Sudhir No. 439/Nuh on government vehicle No. HR-278-2214 which was driven by Constable Ravinder No.1000/Nuh were present at Jamalgarh Road, Punhana for patrolling. A secret informer met us and informed that Satpal alias Papli son of Nemi Chand, resident of Saini Mohalla, Malibas, Ward No. 14, Punhana is*



*doing the work of selling intoxicant substances, which even today has kept the drug for sale in third room on right side of the rooms built in his house situated at Saini Mohalla, Ward No.14, Punhana. If the raid be conducted immediately then Satpal alias Papli son of Nemi Chand, resident of Saini Mohalla, Malibas, Ward No. 14, Punhana can be captured alongwith intoxicant substance. The information of the secret informer was true and reliable. I informed the fellow employees and a raiding party has been set up and the raiding party stopping the passersby and asked them to become a private witness. But all of them left by telling their own justified compulsion. I ASI alongwith other employees on a government vehicle alongwith secret informer reached at the house of Satpal alias Papli son of Nemi Chand, resident of Saini Mohalla, Malibas, Ward No. 14 Punhana. The main gate was closed. When I asked to open the gate, then a person opened the gate and the secret informer signalled towards that person and told that this is Satpal alias Papli son of Nemi Chand, resident of Saini Mohalla, Malibas, Ward No. 14 Punhana. I ASI captured him with the help of other employees. On the asking of ASI, who told his name as Satpal alias Papli son of Nemi Chand, resident of Saini Mohalla, Malibas, Ward No. 14 Punhana. I told him that I have suspicion that you have kept toxicant substance Ganja in your house. I have given notice to Satpal alias Papli son of Nemi Chand under Section 50 of NDPS Act and told him, as per NDPS Act, you have a right that you can get your search done by a Gazetted Officer. A Gazetted Officer can be called on the spot as per your wish. In response to the notice, above Satpal alias Papli son of Nemi Chand said that I want to get my room searched by a Gazetted Officer. Reply to the notice was prepared by me as per the instructions of above Satpal alias Papli son of Nemi Chand and the Satpal alias Papli son of Nemi Chand and the witnesses were appended their signatures on the same. Today, as per list, Mr. Pawan Batra,*



*Naib Tehsildar Punhana has been appointed as Duty Magistrate. Information was prepared under Section 42 of NDPS Act and the same has been sent to Police Station and Duty Magistrate Sh. Pawan Batra, Naib Tehsildar Punhana through Constable Javed No. 337/Nuh. Constable Javed No.337/Nuh after submitting the report in the Police Station Punhana came present at the spot alongwith Duty Magistrate Sh. Pawan Batra Naib Tehsildar Punhana and ASI Sunil Kumar No.716/NNL City, Punhana. Photographer was called at the spot. Duty Magistrate Sh. Pawan Batra, Naib Tehsildar, Punhana asked me about the situation and the person captured and instruct to me to search the person and the room. When the search was conducted in the room of Satpal alias Papli, then in the corner of the room, 6 packets wrapped in brown tape were found. When the wrapped packets were opened and checked, ganja was found in the same. The recovered ganja was put in three plastic bags separately in the presence of Duty Magistrate Sh. Pawan Batra, Naib Tehsildar, Punhana and after arranging the digital scale and found the weight 41 kgs. 720 gms. including a plastic bag and the weight of third plastic bag is 29 kgs. 710 gms. The total weight of the recovered ganja in all three plastic bags was 113 kgs. and 170 gms. The Duty Magistrate Mr. Pawan Batra, Naib Tehsildar, Punhana who had served the stamp in all three plastic bags by putting one stamp of SK and I ASI also had served stamp on each bag by AK and a separate parcel was also prepared of brown colour tapes and plastic envelope and plastic rope in which the ganja was tied, which I ASI stamped with a single seal of AK. Satpal alias Papli could not produce any license/permit on the asking of the Duty Magistrate Sh. Pawan Batra, Naib Tehsildar Punhana for keeping the recovered ganja in his possession. The recovery memo of the abovementioned parcel was prepared in the presence of Duty Magistrate Pawan Batra, Naib Tehsildar,*



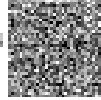
*Punhana and after preparing the list of the articles, the same has been taken into police possession. The recovery memo was signed by Duty Magistrate Pawan Batra, Naib Tehsildar, Punhana and the witnesses. After using the stamp, it has been handed over to Constable Sudhir No. 439/Nuh. The abovementioned Satpal alias Papali has committed an offense under Section 20(B)(ii)(C)-61-85 of NDPS ACT by keeping intoxicants in his possession without any permit. Therefore, Constable Sudhir No. 439/Nuh is being sent to the Police Station for registration of case. Number be informed after registration of the case. Investigation Officer be sent to the place of occurrence for further investigation and the special reports be sent to the higher officers. I am present on the spot alongwith other employees and accused with case property. Today: Malibas, Ward No. 14 Punhana. Sd/- AMIT ASI City Police Post Punhana Dated 09.02.2022 AT 04:15 PM. Today at Police Station: At this time, on receipt of the case file in the police station, FIR No. 46 dated 09.02.2022 under section 20(B)(ii)(C)-61-85 of NDPS ACT has been registered in the Police Station. Computerized copies of FIR have been prepared by C. Rahul Kumar 331/Nuh. The copies of the FIR are being sent through email to the Illaqa Magistrate and higher officers keeping in view the Covid-19 pandemic. The original copy of the police file is being sent through C. Sudhir No. 439/Nuh to the place of occurrence and ASI Govind PP City Punhana has been informed for further investigation.*

*Note: This case has been registered in the presence of ASI Rajesh, Police Station Punhana and assign to the ID of Investigation Officer ASI Govind, Police Post City Punhana.'*

### 3. **Contentions**

#### **On behalf of the petitioner**

Learned counsel for the petitioner has argued that the



petitioner has been falsely implicated in this case and he was named in the instant FIR only on the basis of disclosure statement of co-accused-Satpal @ Papli. He further submits that no recovery has been effected from the petitioner and the petitioner has been in custody for last almost 2 years and 2 months. The contention is that investigation is complete as challan stands presented on 10.08.2022 and charges have been framed on 01.02.2023. He has further argued that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 16 Prosecution Witnesses, only three witnesses have been examined so far.

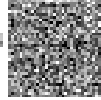
#### **On behalf of the State**

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and files the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 2 years, 1 month and 20 days.

Learned State Counsel on instructions from ASI Govind Prasad opposes the prayer for grant of regular bail on the ground that the recovery effected is of huge quantity i.e. 113 kilogram and 170 grams of ganja. He further submits that the petitioner is a habitual offender as he is involved in three other FIRs and in one of those FIRs the petitioner has subsequently been convicted and is facing sentence.

#### **4. Analysis**

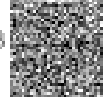
Be that as it may, it is not disputed that the petitioner was nominated only on the basis of disclosure statement made by co-accused



Satpal and no recovery has been effected from the petitioner, the petitioner has already suffered sufficient period in custody i.e. 2 years, 1 month and 20 days and 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 10.08.2022 and charges have been framed on 01.02.2023, out of 16 prosecution witnesses, only three PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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:-

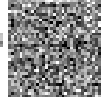
*“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences 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*

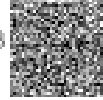


*Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.*

*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.*

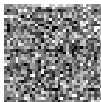
*7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. 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 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.

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.

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

06.08.2024  
anuradha

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