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

CRM-M-37142-2024

Date of Decision: September 19, 2024

JAGTAR SINGH ALIAS AMIT

....Petitioner(s)

VERSUS**STATE OF PUNJAB**

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Paras Khindri, Advocate
for the petitioner.

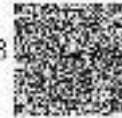
Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

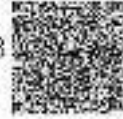
The jurisdiction of this Court under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 read with Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.208 dated 06.11.2022, under Section 22C of NDPS Act, 1985 (hereinafter referred to as 'the Act') registered at Police Station Dinanagar, District Gurdaspur (Annexure P-1).

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

*'SHO P.S Dinanagar jai hind Today I S.I along with ASI Naresh
Kumar 562/GUR, S/CT Raman Kumar 1140 CT Bhupinder Singh*



871/Gur were Patrolling in Government vehicle whose driver is ASI Nishan Singh 669 were checking vehicles and present at Lighta Wala Chownk Dinanagar. That one Motorcycle bearing number PB 06 AG 1429 marked splendor was seen coming from Gurdaspur side and three Cutsurd young persons were on the motorcycle. I S.I indicated them with the torch to stop then the pillion driver suddenly applied the break of the motorcycle and tried to turn back the motorcycle along with his companions. Then I S.I with the help of other officials apprehended them and asked for their whereabouts then the pillion rider of the motorcycle told his name as Jagtar Singh @amit S/O Darshan Singh resident of Kothe Majithi P.S Behrampur and person sitting next to him told his name as Goldy S/O Ram Kumar resident of Islamabad Gurdaspur P.S city Gurdaspur and the person who is sitting at the third number on the motorcycle told his name as Akashdeep @bhatti S/O Jaspal R/o Tung P.S Sadar Gurdaspur And I S.I on the basis of suspicion I told them my name, rank and deployment and given them the notice under section 50 of NDPS act one by one and asked them that I have a doubt you or your motorcycle might be possessing some intoxicant substance I want to search you and your motorcycle but you have the legal right that you can get you and your motorcycle be searched in the presence of any magistrate or Gazetted officer who can be called at the spot. Then they said that we believe you and you can search us and our motorcycle and the separate consent memo has been prepared and before searching we tried to join the Public witness but no one has joined. Then I S.I along with other companions first check the tool box of motorcycle and found one polythene with intoxicant tablets without any mark which comes to 530 intoxicant tablets in total when Counted. Then it was weighed on the electronic weighing machine its weight come to 114 gm of intoxicant tablets. and then the recovers tablets were put to the same polythene and then put in a plastic Box and parcel was prepared and it was stamped with my DS/1 stamp and Sealed It was taken in possession by preparing the separate recovery memo as a Proof. Sample of this has been prepared Seprately The stamp after using handed over to ASI Naresh Kumar 562/Gur. Form 29-M will be completed in the presence of hon'ble



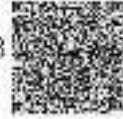
judge. That by keeping the possession of intoxicant tablets the above said Jagtar Singh @amit, Goldy and Akashdeep has not produced any chit or licence for the same. because the accused Jagtar Singh @amit son of Darshan Singh R/O Kothe Majithi P.s Behrampur and the person sitting behind him namely Goldy S/o Raj Kumar R/O Islamabad Gurdaspur P.S City Gurdaspur and person sitting next to him on third number namely Akashdeep @bhatti S/O Jaspal Singh R/o Tung P.S Gurdaspur by keeping the possession of 530 intoxicant gm tablet i.e is 114 committed the offence under section 22 (C) has 61- 85 of NDPS act. the Ruqa has been sent by hand through CT Bhupinder Singh 871/gur to the police station. The case number ne informed after registration of the Case. Special reports be prepared sent officials to Ilaqa magistrate and other Control room has been informed through wireless. I S.I is busy in inquiring at the spot sd/ Daljit Singh S.I, P. S Dinanagar Dated 6.11.22.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is asserted that the recovery in the present case is of 530 tablets containing salt/Alprazolam weighing 104.94 mg, from the tool box of motorcycle. It has further been asserted that it is highly improbable that a person carrying the contraband, would carry the same in a tool box of motorcycle. It is contended that the recovery in the present case is marginally above the commercial quantity and further the weight of the polythene is including while weighing the contraband.

The assertion is that there is a complete violation of Sections 42 and 50 of the Act.



Reference has been made to the various orders passed by the Co-ordinate Benches of this Court i.e. order dated 02.08.2021 passed in CRM-M-4408-2021 titled Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Binder Kaur @ Goga Vs. State of Punjab reported as 2021(3) RCR (Criminal) 360, Jaskaran Singh @ Jassu Vs. State of Punjab, reported as 2021(2) RCR (Criminal) 837, order dated 28.02.2020 passed in CRM-M-8026-2020 titled as Lakhwinder Singh @ Lakha Vs. State of Punjab.

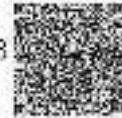
On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is involved in other cases also, meaning thereby, he is a habitual offender

Learned State counsel has opposed the prayer made in the present petition but could not dispute the fact that the contraband is alleged to have been carried in a tool box of motorcycle. He, however, submits that the weight of the total recovered contraband works out to 104.94 grams of 'Alprazolam' which would fall within the category of commercial quantity.

4. Analysis

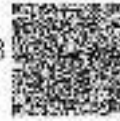
Admittedly, the recovery was effected from a tool box of motorcycle, the same made the case of the prosecution doubtful and it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the same in a tool box of motorcycle.



From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 01 year 10 months 09 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 24.04.2023; charges are yet to be framed, there are total 10 prosecution witnesses, out of which none has been examined, 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:-

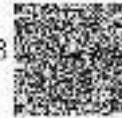
“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences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

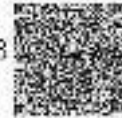


suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, 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 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 the 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 aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of



Bhartiya Nagrik Suraksha Sanhita, 2023 read with Section 439 Cr.P.C. 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

19.09.2024
Sangeeta

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