



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CRM-M-40591 of 2022
Date of decision: 02.12.2024

Gurmeet Kaur @ Meeto

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mikhail Kad, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C, seeking the concession of grant of regular bail for the petitioner in FIR No.61 dated 20.03.2022 under Section 22 (Act No.61) of NDPS Act, 1985 registered at P.S Sadar Nabha and District Patiala.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ At this time on written ruqa by ASI Rajinder Singh 490 for registration of case against Gurmeet Kaur @Meeto wife of Late Shingara Singh r/o Indra Basti Sunam village Banera Khurd received at Police Station through senior constable Pardeep Singh 1658/Patiala which is as, " Officer Incharge Police Station Sadar Nabha Fateh, Today myself ASI alongwith senior constable Pardeep Singh 1658/PTA, Constable Amanpreet Singh 3470/PTA and Lady Senior constable Manpreet Kaur 658/PTA in a private car alongwith laptop and printer were going from thuhi towards village Banera Khurd for patrolling and checking suspected persons. Then at about 7:45 PM when



police party reached village Banera Khurd at Anaaz Mandi then one woman was seen coming and who on seeing the police party became perplexed and tried to turn back and who throw the transparent polythene bag held in her right hand on left side, then myself ASI with the help of colleagues stopped her and lady senior constable Manpreet Kaur 658/PTA asked her name and address who told her name as Gurmeet Kaur @ Meeto wife of Late Shingara Singh resident of Indra Basti Sunam village Banera Khurd, then myself ASI seen the polythene bag thrown by her and intoxicating tablets were clearly visible from the transparent polythene bag thrown by her. By keeping in her possession intoxicating tablets Gurmeet Kaur @ Meeto wife of Late Shingara Singh resident of Indra Basti Sunam village Banera Khurd made out an offence under section 22/61/85 NDPS Act. So ruqa is being sent through Senior Constable Pardeep Singh 1658/PTA after getting it typed for registration of case against Gurmeet Kaur @ Meeto wife of Late Shingara Singh r/o Indra Basti Sunam village Banera Khurd. After registration of case, case no. be informed. Incharge control room Patiala is being informed. As per directions of Hon'ble Supreme Court some competent officer be sent from police station to get the recovery effected. Mukh Munshi Police station is informed on telephone. Myself ASI alongwith Police party is present at the spot with above mentioned woman. In the jurisdiction of Anaaz mandi village Banera Khurd Dated 20.03.2022 AT 08:20 PM. Attested ASI Rajinder Singh Police station Sadar Nabha District Patiala. Dated 20.03.2022. After receiving the ruqa above mentioned case against Gurmeet Kaur @ Meeto wife of Late Shingara Singh resident of Indra Basti Sunam village Banera Khurd is being registered and record are being completed. Incharge control room Patiala is being informed through email. Copy of Fir's are being sent to Illaqa Magistrate and senior police officer's through post. Case file along with original ruqa is being sent through senior constable pardeep singh 1658 to ASI Amrik Singh. ASI Amrik Singh 2286/PTA Chowki Rohli Pull Polce Station Sadar Nabha is going for investigation at the spot. DDR No. 23 AT 21:32 Date 20.03.2022. ”

Contentions

**On behalf of the petitioner**

3. The learned counsel for the petitioner submits that at the time of alleged recovery, the police party was in a private vehicle and it is highly improbable that the accused would keep contraband in a transparent polythene bag, which was visible to everyone. Neither the registration number of the vehicle nor the fact that who was driving the said vehicle was mentioned in the FIR.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State. He submits that after framing of charges on 13.09.2022, out of total 10 prosecution witnesses, five witnesses have been examined so far and the petitioner is behind bars for 01 year, 11 months and 06 days. Learned State counsel could not point out any overt act or involvement of the petitioner in any offence subsequent to his release on interim bail.

Analysis

5. Be that as it may, considering the fact that out of total ten prosecution witnesses, five witnesses have already been examined and petitioner is behind bars for 01 year, 11 months and 06 days, meaning thereby the conclusion of trial will take a considerable time, this Court is of the view that petitioner cannot be detained behind the bars for an indefinite period. Furthermore, it is evident that the petitioner has never misused the concession of interim bail granted to him by this Court vide order dated 18.07.2023, which is sufficient for this Court to infer that the conduct of the petitioner is good. Further, 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



“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 ReInhuman 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.”

6. 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 as 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



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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C on her 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

02.12.2024
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No