



213

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

CRM-M-37024-2024

Date of Decision: September 03, 2024

SAHIL

....Petitioner(s)

VERSUS**STATE OF HARYANA**

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Kaushik, Advocate
for the petitioner.

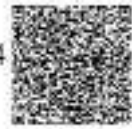
Mr. B.S. Virk, Senior DAG, Haryana.

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

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession of regular bail in FIR No.0529 dated 21.06.2022, under Section 29 of NDPS Act 1985 (Section 20 NDPS Act 1985 added later on), registered at Police Station Chandni Bagh District Panipat.

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

'Copy Tahrir is as follow, SHO Saheb Police Station Chandni Bagh Panipat Jai Hind Today I ASI, HC Anil Kumar 12, Constable Sunil 1019, Constable Mohit 1366, Driver Constable Raju 603 Driver CIA-1 Panipat with Government Vehicle no. HR 03 T 2672 (Tavera) was patrolling near Sanoli Road Babel barricade. The informer has informed me that Sikandar alias Shubham son of Suraj resident of Balmiki Basti



Gangapuri Road Panipat driving his grey colour baleno car whose number is HR06AT5056 having ganja, coming from the way of transport nagar heading towards sonali road. Vehicle is filled with heavy quantity of ganja. If barricading is done on Fori Nala, then Sikandar alias Shubham son of Suraj, resident of Balmiki Basti, Gagapuri Road, Panipat can be controlled with his vehicle Baleno loaded with ganja. Considering the information as reliable, after informing the fellow employees about the informer, I ASI prepared a notice under Section 42 of NDPS ACT, filed a report and sent constable Mohit 1366 for entry in journal dairy of Chandni Bagh police station, Panipat. I ASI along with fellow employees reached at babel barricade and start checking of vehicles. After sometime as per the information given by the informer, vehicle number HR06AT5056 of gray color was seen coming. I ASI with the help of fellow employees stopped the vehicle and checked it, A young boy was driving that vehicle. When I asked about the name of that young boy sitting there, he told his name as Sikandar alias Shubham, son of Suraj, resident of Balmiki Basti, Gangapuri Road, Panipat. I informed him that I suspect that there is some intoxicant in your vehicle. I ASI prepared a separate notice under Section 50 of NDPS ACT and explained that you have full right to get yourself and your vehicle searched in front of a Gazetted Officer or Duty Magistrate. The above mentioned Mr Sikander alias Shubham understood the notice and signed it in English and he himself wrote his reply to notice that I want to search myself and my vehicle in front of the Duty Magistrate, on which I ASI called the nodal officer Dr. Ravinder Veterinary surgeon Jatal, Panipat from my mobile no 9466706090 to his moblie no. 8168922494 and informed about his arrival at the spot. After some time, Nodal Officer Dr. Ravindra Veterinary Surgeon Jatal Panipat arrived at the spot. He was informed about the situation. On the orders of the Nodal Officer, my search was carried out by Mr. Anil 12 and nothing was recovered from me except things of daily use. Then the nodal officer gave his written orders to me that you have to search Mr. Shubham alias Sikander and his vehicle Baleno number HR06AT5056 in front of me. The search of Mr. Shubham alias Sikander and the vehicle Baleno was searched out as per the order and a plastic colored white bag was found on the rear seat of the vehicle Baleno. On checking, a light green



colored substance was found inside the bag. According to my experience and as per Shubham alias Sikander told me, ganja was found. Identification memo of intoxicant substance was made, on which the witnesses and Sikandar alias Shubham put their signatures and identified by the nodal officer. I ASI arranged computerized weighting machine and took out the white colored plastic bag from that vehicle and weighed it, and the weight of the recovered ganja along with the plastic bag was 35 kg. When Mr. Sikandar alias Shubham asked for license and permit regarding ganja he was failed to show the same. On the spot a separate parcel of recovered ganja was made, stamped and sealed by nodal office by his 'KP' stamp and kept it with himself. Seal and parcel was identified by nodal officer. Ganja and baleno car no HR06AT5056 was recovered for evidence. Recovery memo was signed by Shubham and identified by nodal officer. The nodal officer has confirmed that Mr Sikandar alias Shubham, above mentioned, committed crime under section 20 NDPS ACT by having 35 kg ganja in his possession, a case has been filed against him. For the taking of endorsement constable Raju 603 CIA-1 was sent to police station, Panipat. Special report may send to higher officer and second investigation officer may send for further investigation. Today 21/06/2022 at 8:00 AM case no. 529 under Section 20 of NDPS was registered by receiving tehrir. Copy of original tehrir will send by constable Raju. Special report will be sent through EMAIL to the concerned officer and area magistrate. As per the order of higher officer, 2ND IO ASI Rajendra 63/ PPT Panipat was informed about reaching the spot. First Information Report was recorded in the presence of ASI Rajkumar 919/PPT. Rajender kumar is now investigation officer of the case.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was nominated later on the basis of disclosure statement of main accused Sikander alias Shubham. He contends that no contraband was recovered from the possession of the petitioner except



for a sum of Rs.10,000/- from his house and is in custody since 27.06.2022. Learned counsel for the petitioner further submits that co-accused namely Sumit @ Kaka who was also nominated on the basis of disclosure statement of main accused Sikandar alias Shubham has already been granted the concession of regular bail vide order dated 10.07.2024 (Annexure P-3).

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for almost 02 years 01 month and 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail. He further informs the Court that in the present FIR challan stands presented on 06.08.2022 and charges stands framed on 15.12.2022. Learned State counsel besides points out that the petitioner is involved in one another case bearing FIR No.362 dated 29.04.2022 registered at Police Station Chandni Bagh Panipat, Panipat in which he is on bail and other Court Complaint bearing No.MNT 125/485/2023 dated N/A under Section 125 Cr.P.C. is also registered at Police Station Panipat against the petitioner.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 02 years 01 month and 15 days similarly situated co-accused have already been granted concession of bail by this Court, 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 06.08.2022, charges stands



framed on 15.12.2022, out of 19 prosecution witnesses, 02 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 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 the concession of bail.

5. **Decision:**

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

03.09.2024
Sangeeta

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