



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37030-2024
DECIDED ON: 09.08.2024

DEEPAK

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. A.G., Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in FIR No. 671, dated 29.07.2022, under Sections 22, 22(C), 22(A), 29 of NDPS Act, 1985, registered at Police Station Karnal City, District Karnal.

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

“To the Head officer Police Station Karnal Jai hind today on 28.07.2022 I SI along with SI Krishan Kumar 1191/KNL, HC Harpreet Singh 1067/KKR, EASI Surender Singh 799/Jind along with Vehicle No. HR05GV-9783 Scorpio, whose driver is Constable Ajay Kumar 799/KNL in respect of investigation in FIR no.293 Dated 24.07.2022 under Section 22, 61, 85 NDPS Act to the accused Amit son of Prem Singh resident of Village

Sanoli police Station Sanoli District Panipat presently tenant Gali No. Shanti nagar police Station Ram Nagar District Karnal was taken on Police remand for 3 days from Hon'ble Court and after putting accused Sagar son of Vijay Kumar resident of Gali No.6 Shiv Colony District Karnal behind bars, proceed for the search of Deepak Gujral and Khanaya Saini resident of Afgana Mohalla Karaina District Shamli, when reached near Nirankar Chowk Railway Road Karnal then accused Amit Kumar told me SI that 2/3 days ago I from my mobile No. 9996741241 ordered 2400 intoxicating tablets of Alperamed 0:50 MG without Bill from Deepak Gujral resident of Afgan Mohalla mobile No.9520740983. Deepak told me that on 29.07.2022 Khanaya Saini resident of Afgana Mohalla Kairana District Shamli will come in the morning time in the area of Karnal to supply the intoxicating medicines. I will also send my order through Khanaya Saini. Khanaya Saini will meet you behind old Bus Stand, Karnal backside tea shop. You after taking intoxicating medicines from Khanaya transfer money to me through Google. If search be conducted behind the Bus stand Khanaya Saini can be apprehended, and if his search be conducted after apprehending him, then heavy quantity of intoxicating medicines can be recovered from him. That the information is correct and believable. On which after preparing Notice under Section 42 of NDPS Act was sent to the Police station City Karnal for information through EASI Surender Singh 799/Jind. On finding the offence under Section 22-61-85 NDPS act has been committed, I SI by writing request for registration of case sent to the police Station City Karnal through Ajay Kumar 799/KNL. After registration of case number be informed. Report of the instant case be sent to the higher officers. I

SI is complainant in the instant case. Therefore for further investigation of the instant case another investigation officer be sent o the spot. I SI along with companion employees along with accused Amit above along with Government vehicle proceed for old Bus Stand karnal.”

3. **Contention:**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is at parity with the another co-accused Ashish Kumar alias Ashu, who has been granted the concession of regular bail by this Court vide order dated 02.08.2024 passed in CRM-M-34430-2024, copy of which has been produced before this Court by learned counsel for the petitioner. He further contends that the petitioner was not initially named in the instant FIR but was subsequently roped in the same only on the basis of disclosure statement of co-accused Kanhaiya Saini. It has been asserted on behalf of the petitioner that nothing has been recovered from the present petitioner also other co-accused persons, namely, Dharamveer and Amit Kumar have already been granted the concession of regular bail vide Annexures P-3 and P-4 respectively.

On behalf of 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 petitioner is involved in one more case i.e. FIR No.293, dated 24.07.2022, under Sections 22 of NDPS Act, registered at Police Station Ram Nagar, Karnal, meaning thereby, he is a habitual offender, however, he is not in a position to controvert

the submissions as made by counsel for the petitioner that the petitioner being at parity with another co-accused Ashish Kumar alias Ashu.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 11 months and 11 days for which the petitioner has suffered sufficient incarceration; the petitioner is at parity with another co-accused Ashish Kumar alias Ashu, who has been granted the concession of regular bail by this Court vide order dated 02.08.2024 passed in CRM-M-34430-2024; the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Kanhaiya Saini; other co-accused persons, namely, Dharamveer and Amit Kumar have already been granted the concession of regular bail vide Annexures P-3 and P-4 respectively added with the fact that challan stands presented in Court on 21.07.2023, charges have been framed on 21.07.2023, out of total 34 prosecution witnesses, none has been examined so far, meaning thereby, the conclusion of the trial will take a 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 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.

09.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No