



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37563-2024
DECIDED ON: 29.08.2024

TALWINDER SINGHPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh Sekhon, Advocate and
Mr. Gagandeep Singh Gill, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, A.A.G., Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in the case FIR No.393 dated 28.12.2023 under Section 22, 27 and 29 of ND&PS Act, 1985, P.S. STF Phase IV (Sector 79) Mohali, District SAS Nagar (Mohali) having jurisdiction at District Barnala till the decision of the case.

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

*“ To the SHO PS STP. Sector 79, SAS Nagar, Jai Hind.
Sir today I ASI along with HC Gurlal Singh no. 519, SC
Nirbhai Singh 332/BNL, SC Paramjit Singh No. 178/BNL
and SC Kamaljit Singh 50/299 STP Patiala Range,
Patiala in govt. vehicle registration no make Bolero
Camper bearing PB-65-AN-8791 being driven*

temporarily by SC Nirbai Singh 332/BNL having laptop, printer, invertor, investigation kit and drug detection kit along were present at Bus Stand, Karamgarh District Barnala in relation search of drug paddlers, meanwhile it was time around 06:20 PM, a secret informer came present and informed that Talwinder Singh son of Udham Singh resident of village Mangewal, PS Thulliwal District Barnala "aged about 32 years and Gurvir Singh son of Harjit Singh resident of Mithowal, PS Sandaur District Malerkotla "aged about 26 years", in connivance with each other are indulged in the business of selling intoxicant vials and intoxicant tablets since longtime. Today in car make Swift of white color bearing registration no. PB 19M 0412 are coming towards Sherpur Sanghera side from Dhanaula via going through Barnala for supplying intoxicant vials and intoxicant tablets to some of their customer. If checking in a planned manner be conducted at T-Point, Shekha Road Barnala the said Talwinder Singh and Gurvir Singh can be apprehended along with heavy quantity of intoxicant vials and intoxicant tablets. Information is credible and reliable. The act of said Talwinder Singh and Gurvir Singh by keeping in their possession heavy quantity of intoxicant vials and intoxicant tablets and to sell the same by conniving with each other fulfils the ingredients of commission of offence under section 22, 29 NDPS Act. Therefore sending the ruqa to PS STF Sector-79 by hand SC Paramjit Singh no. 178/BNL for the registration of case against said Talwinder Singh son of Udham Singh resident of village Mangewal, PS Thulliwal District Barnala and Gurvir Singh son of Harjit Singh resident of Mithowal, PS Sandaur District Malerkotla under the said offence. Kindly

inform the file number after registering the case and inform higher officials and Control Room. I ASI along with fellow policemen am leaving for T-Point Shekha Road, Barnala for conducting raid and barricading. In the revenue limits of: Bus Stand, Karamgarh, District Barnala. Time 07:00 PM SD/- ASI Paramjit Singh 648/SGR, STF Patiala Range, Patiala Dated 28.12.2023”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that no recovery was effected from the conscious possession of the petitioner as the same was recovered from the dash board of the alleged vehicle. He further contends that the petitioner is not the owner of the alleged vehicle, wherein the recovery was effected. He further contends that the petitioner is not involved in any other case, meaning thereby, he is a man of clean antecedents. It has been argued on behalf of the petitioner that mandatory provisions of NDPS Act has not been complied with in the present case. It has been submitted that the co-accused, namely, Gurbir Singh has been granted the concession of regular bail by this Court vide order dated 21.05.2024 passed in CRM-M-24672-2024. Mr. Sekhon has gone to the extent of saying that even otherwise if the batch number on all the vials do not indicate presumption in favour of the prosecution, it is the duty of prosecution to take representative sample from all the vials to get ascertain the contents of any contraband in each vial which has not been dealt with in the instant case.

On behalf of the 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 submits that 15 vials of cough syrup do fall within the commercial quantity, therefore, the petitioner does not deserve the concession of regular bail.

4. Analysis

Be that as it may, having regard to the submissions made by respective counsels including the fact that the petitioner was alleged to have been arrested from the spot while travelling in a car bearing registration No.PB-19-M-0142 whereas the case set up by the petitioner that he was taken into custody from his house and false recovery has been planted upon him.

Apart from above, the petitioner has suffered incarceration for a period of 07 months and 28 days; co-accused of the petitioner, namely, Gurbir Singh has been granted the concession of regular bail by this Court vide order dated 21.05.2024 passed in CRM-M-24672-2024; the petitioner is not involved in any other case, meaning thereby, he is not a habitual offender added with the facts that challan stands presented on 18.03.2024, charges have been framed on 08.04.2024 and out of total 16 prosecution witnesses, none has been examined so far, which is suffice for this Court to infer that the conclusion of 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.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby 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.

29.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No