



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37829-2024

Date of Decision: August 09, 2024

VIJAY KUMAR @ VIJAY@HARCHARAN SINGH

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.193, dated 07.12.2023, under Section 21(c)/25/29/61/85 of NDPS Act, 1985, registered at Police Station Division 7, Jalandhar.

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

“Chief Officer Police Station Division No. 7 Jalandhar Jai Hind. Today SI including ASI Ranjit Pal No. 2184, ASI Nishan Singh No. 2165, S/CT Charanveer Singh No. 3037, HC Lalit Kumar No. 491, SR/CT Gurmeet Singh No. 2680 were on Govt. Vehicle Balero No. PB08-DS-



4498 whose driver SR/CT Jaswinder Singh 918 for Nakabandi carrying laptop and printer were present near Officer Enclave Lohara Nangal Foldiwal Road regarding suspicious vehicles were being checked that a vehicle came from foldiwal side and the vehicle was driven by a young man who was stopped with suspicion car number PB08-EP-7868 XUV 300 color white who was trying to escape from the spot, but SI with the help of fellow employees, arrested him along with the vehicle and asked for his name and address. Who gave his name as Pankaj son of Deepak Kumar Resident of House No. 50, Tower Enclave Phase-1 Wadala Chowk Jalandhar, Hall Resident of House No. 1229, Aryan Nagar Subhana Road Gara Jalandhar. On which I informed Pankaj son of Deepak Kumar, resident of House No. 50, Tower Enclave Phase-1 Wadala Chowk, Jalandhar Hall, resident of House No. 1229, Aryan Nagar, Subhana Road, Gara Jalandhar, introduced himself that I am posted in Jalandhar. The name plate is attached to my uniform and notice under Section 50 of the NDPS Act that there is a suspicion that there is any objectionable drug in your vehicle, and we have to search your vehicle. But you have the legal right to get yourself searched before any magistrate or from a gazetted officer. Who said that I want to get my vehicle searched by a gazetted officer. On which SI called Mr. Paramjit Singh PPS ACP/ DETECTIVE Jalandhar at around 12:30 AM from his phone number 98156-87644 to his phone number 98140-86612 and requested him to reach at spot after telling all the circumstances and situation. About 10 minutes later, the gunman arrived at spot arrived on government vehicle PB65- BC-6450. When asked the name of the young man arrested by me, he told his name as Pankaj son of Deepak Kumar, resident of house number 50,



Tower Enclave Phase-1, Wadala Chonk, Jalandhar, resident of house number 1229, Aryan Nagar, Subhana Road, Gara Jalandhar. On which Paramjit Singh PPS ACP/DETECTIVE Jalandhar issued a notice to Pankaj under section 50 NDPS ACT that there is suspicion of any objectionable drug in his vehicle number PB08-EP-7868 XUV 300 color white due to which his vehicle was impounded for searching. But you have the legal right to get your vehicle searched by a magistrate or any other gazetted officer. Who said that I believe you and i want to get my vehicle search from you. Police tried to make the public witness before searching the said vehicle. But due to lack of time and fear the no one could be made public witness. On which SI, on the instruction of Mr. Paramjit Singh PPS ACP Detective Jalandhar, and in the presence of Pankaj, carried out the search of the said vehicle number PB08-EP-7868 XUV 300, then On the break, a brown bag was there in which a black wax envelope was found which was found to be heroin. When the suspected heroin weighed was found to be 2 KG (two kilograms). The suspected heroin was put in a separate plastic box, the parcel was prepared and the suspected bag was wrapped in a separate cloth. Prepared the goods suit parcel by putting in. SI with his seal stamped with the letter S.S. Whereas Mr. Paramjit Singh PPS ACP Detective Jalandhar stamped with his seal P.S on two of the parcels. The parcel plastic box heroin weighing 2 KG (two kilo grams) and the bag stamped with seal SS/PS were taken in custody by the police and verified That Pankaj has committed an offense under Section 21-C/61/85 NDPS ACT by keeping 2 KG of heroin in his possession. SR/CT Charanveer Singh No. 3037 is being sent to the police station to register a case. By filing a case, the number should be made aware of the



case. Special reports should be issued and sent to the service of the District Magistrate and the chief officers. SI including fellow employees sent for further investigation at spot. Sukhraj Singh SI CIA Staff, Commissionerate Jalandhar Dated 07.12.2023 Today Area: Officer Enclave Luhara Nangal Foldiwal Road Jalandhar AT: 01:40 AM Today Police Station: The above case is being Mosul Police Station. This first information report is being registered under the said section and the copy FIR along with the original FIR is being sent to SI Sukhraj Singh No. 2141/JAL of SR/CT for further investigation and the control room is being informed and special reports are being prepared and sent through S-L/CT Rajni Bala 2477/JAL to District Magistrate Sahib and Senior Officers.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant FIR. He was neither present at the spot nor any recovery has been effected from him and his name has been implicated merely on the basis of disclosure statement of co-accused. Moreover, at the time of alleged incident, the petitioner was already in custody in other FIR No.317 dated 10.12.2023 under Section 21 of NDPS Act. The petitioner is in custody for almost 07 months.

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 seeks dismissal of the instant petition on the ground that the allegations



against the petitioner are serious in nature and he is involved in other FIRs, meaning thereby, he is a habitual offender.

4. **Analysis**

From the above case it can be culled out that no recovery has been effected from the petitioner and he is behind the bars for last 06 months and 24 days; added to the fact that challan stands presented on 03.06.2023 charges are yet to be framed also, out of total 16 prosecution witnesses, none has been examined till date, 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 made 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 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.

(SANDEEP MOUDGIL)
JUDGE

09.08.2024
Sangeeta

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