



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40330-2024

Date of Decision: September 11, 2024

DILBAG SINGH ALIAS BAGA

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Abhilasha Kainth, Advocate for
Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

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

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 for the petitioner in FIR No.219 dated 24.07.2023, under Sections 21 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Special Task Force, District SAS Nagar, Mohali.

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

‘Station House Officer, Special Task Force SAS Nagar Mohali Jai Hind Today I SI was in office of STF/BR/ASR and at about 2.30 pm an informer came and informed me that Dilbagh Singh @Baga son of Late Gurmukh Singh r/o Bagh Wali Gali No.4, old Jawahar Nagar Maqboolpura Amritsar who is about 39 years, clean shaven height about 5-6/7" inches is into the business of heroin and he has spoiled the life of number of young persons by making them habitual of heroine. Generally



Dilbag Singh supply the heroine to his customers from his house or some times he goes on his motor cycle to supply the heroine to his customers and today also Dilbag Singh @Bagha is supplying heroine to his customers from his house only and if raid is conducted then Dilbag Singh can be apprehended and heavy quantity of heroine can be recovered if his house is search. The information is reliable and the team incharge Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR in informed and on his instructions one police party is prepared which includes myself, ASI Surinder Kumar No.1052/TT, ASI Amanjeewan Jyot No.4/93, L-LR/ASI Maninder Jit Kaur 1378/FT, C-II Ajay Kumar 2967/ASR-City, CT-Jaskaran Deep 9/659, CT Sandeep Singh 4/628 started in a government vehicle driven by ASI Manpreet Singh 9/86 and Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR started in private vehicle for conducting raid and reached near the house of Dilbag Singh and the person with the same appearance was standing outside and after seeing the police party he entered the house and tried to run away from the roof. An effort was made to join a witness from the public before searching the house of Dilbagh but nobody was ready for that then on the instruction of Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR search of the house of Dilbagh Singh was conducted And during search a black envelop was found from under the bed of his bedroom and the said bag was checked in the presence of Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR and one transparent bag was found from insite it and on weighing on electronic weighing machine 260 gram heroine along with the bag was found and the said heroine was kept in a separate plastic box and cloth parcel was prepared and I put my seal of BS on it and Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR put his seal of VK on it. That the plastic bag containing the heroine was taken into police possession and a separate parcel was prepared for electronic weighing machine and I put my seal of BS on it and separate Fard was prepared. I SI after using my seal handed over to ASI Aman Jeewan Jot Singh 4/93 and Sh. Varinder Kumar PPS/DSP/SPR/BR/ASR kept his seal of VS with himself. Dilbag Singh @Bagha have committed an offence under Section 21/61/85 of NDPS Act. Computerized ruga was prepared and sent through Mobile phone on whataspapp and e-mail to pssttsasnagar@gmail.com to STF



Mohali. Number of the case be informed after registering the same through mobile phone and e-mail to baljindersinghuppall1035@gmail.com Special report be issued to Magistrate Sahib and High officials. Control room be informed. Original ruqa is being sent to police station through CT-Sandeep Singh 4/628 to police station. I SI am busy on the spot for investigation. '

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. There is no evidence against the petitioner that could connect him with the alleged commissioning of the offence. The petitioner is behind the bars since 06.11.2023. Challan stands presented on 24.04.2024 and charges having been framed on 22.07.2024. Also out of total 14 prosecution, none has been examined so far.

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 09 months 14 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 24.04.2024 and charges having been framed on 22.07.2024 also there are six other cases pending against the petitioner meaning thereby he is a habitual offender.



4. Analysis

From the above case it can be culled out that charges have been framed; recovery of 260 grams of heroin is marginally over and above the commercial quantity, that too is highly doubtful in the light of circumstance under which the petitioner has been nominated as an accused in the case i.e. the recovery effected is alleged to have been made from his own house. The contraband measuring 260 grams lying underneath his bed in his own bedroom and it is amazingly left open-ended as to how the secret information qua the availability of the contraband in his bedroom under his very bed came into the notice of the investigating agency especially when the inefficiency of the investigating agency came forth whereby the petitioner ran away from his house and was only arrested after 3 ½ months from the date of recovery in some other case only during the interrogation in that FIR; the disclosure/confessional in the present FIR got recorded.

Be that as it may, charges have been framed on 24.04.2024 meaning thereby investigation is complete and out of total 14 prosecution witnesses, none has been examined yet and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereby in the instant case, challan stands presented on 04.07.2024 and charges are yet to be framed also out of 17 prosecution witnesses, none has been examined yet, 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 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 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 hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. 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

11.09.2024
Sangeeta

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