



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-M-39444-2024
DATE OF DECISION: 22.08.2024

JAGDEV SINGH ALIAS JAGGU ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S.Sekhon, Advocate for the petitioner(s).
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 for the grant of regular bail to the petitioner in FIR No.99 dated 01.08.2022, under Sections 18 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Badhni Kalan, District Moga.

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

‘SHO P.S. Badhni Kalan, Fateh. Today, I, ASI alongwith ASI Ashok Kumar No.615/Moga. S/Ct. Jora Singh No.1102/Moga, PHG Gurdit Singh No.11354 in Government vehicle Bolero Camper bearing No.PB-29-H-8312, which was driving by ASI Charanjit Singh No.293/Moga and printer is already installed in vehicle, was conducting patrolling and searching of suspicious persons within the jurisdiction of P.S. Badhni Kalan and when police party reached near Bus Stand Badhni Kalan, where a secret informer came up to me, ASI and



by taking me on one side informed that Jagdev Singh s/o Bachittar Singh, r/o Kalajhar, District Sangrur is habitual of selling opium by travelling one city to another. Even today itself, by taking huge quantity of opium, he is coming on black colour scooter Hero Pleasure bearing No.PB-13-AM-3057 to Badhni Kalan, District Moga via G.T. Road Moga-Barnala from the side of Barnala for supplying it. If picketing is being installed at some adequate place then above said Jagdev Singh can be apprehended and huge quantity of opium can be recovered from his nossession. On finding the information to be trustworthy and believable, said act of Jagdev Singh for indulging himself in business of selling opium has fulfilled the ingredients of offence under Sections 18/61/85 of NDPS Act. Accordingly, after writing ruga, same is being sent to P.S. Badhni Kalan by hand through PHG Gurdit Singh No.11354 for registration of FIR. After registering FIR, number of which be informed. Special reports to issued. Senior officers and PCR Moga be informed. Request was made to Insp. Kikkar Singh, Incharge, CIA Staff, Moga on mobile phone that in compliance of orders of Hon'ble Punjab & Haryana High Court, Chandigarh, some other Investigating Officer be sent at the spot for conducting further investigation, who replied that ASI Santokh Singh No.271/Moga alongwith Ct. Lovepreet Singh No.235/Moga with laptop is being sent at the spot. Sd/- Gurbhej Singh, ASI CIA Staff, Moga dated 01.08.2022. Today at Bus Stand Badhni Kalan at 05:30 PM. Today, on receiving of above said ruga at police station, FIR has been registered in CCTNS against accused for the respective offences and thereafter, copy of FIR alongwith original ruga is being sent to ASI Santokh Singh No.271/Moga, CIA Staff Moga by hand through the same PHG. Special reports are being sent to Ilaga Magistrate and senior officers by hand through S/Ct. Raj Singh No.1226/Moga. PCR is being informed.'



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 and nothing has been recovered from the conscious possession of the petitioner. The submission is that the petitioner was arrested from his village Kala Jhar, District Sangur and the alleged recovery of 7 kg. of Opium was planted upon him and the said fact is evident from the photographs placed on record as Annexure P-3. The petitioner is in custody for last 2 years and 13 days. He further submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 15 Prosecution Witnesses, only 2 have 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 2 years and 13 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is involved in one more FIR i.e. FIR No. 97 dated 07.07.2012 under Sections 420, 0467, 468, 471, 380, 120-B IPC registered at P.S. Urban Estate 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 18.01.2023 and charges stands framed on 03.02.2023.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 2 years and 13 days and nothing has been recovered from his conscious possession 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 18.01.2023 and charges stands framed on 03.02.2023, out of 15 prosecution witnesses, only 2 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.

Hon'ble the Supreme Court in its latest judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571, observed as under :-

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case



like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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 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

22.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>