



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-39923-2024
DATE OF DECISION: 23.08.2024

JASPREET SINGH @ JAJJU ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sukhjit Singh, 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 regular bail to the petitioner in FIR No. 97, dated 18.06.2022, under Sections 22 and 25 of NDPS Act, 1985, registered at Police Station City Jagraon, District Ludhiana (Rural).

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

'Station House officer, City Jagraon, "Jai Hind", Today I SI along with Constable Tejinder Singh number 216, and constable Baljeet Singh number 966, along with private laptop, printer and search light were on patrolling in the official vehicle PB 10 GK 4168 who's driver was H. Gurdeep Singh number 50 were present at Jhansi Rani Chwonk in the search of bad elements. At about 05:30 PM one secrete informant joined the police party and informed me that Jaspreet Singh @ Jajju son of Sulakhan Singh resident of near Science college Jagraon and Harjinder Singh @ Bali son of Kulwant Singh @ Kaka resident



of Gandhi Galim near Guru Da Bhata, Jagraon who are indulged in selling of intoxicant tablets, Today they are waiting for their customers for selling the intoxicant tablets on their motorcycle number PB 35 AA 3712 model Splendor Hero, Colour Black in the ownership of Harjinder Singh @Bali at Science college Jagraon near Cremation ground. They used to reach at cremation ground after selling the intoxicant tablets on their motorcycles in the nearby locality. If raid be conducted immediately at cremation ground then Jaspreet Singh @ Jajju, Harjinder Singh @ Bali can be apprehended along with intoxicant medicines. The information is true and reliable. The act of Jaspreet Singh @ Jajju, Harjinder Singh @ Bali attracted the offences u/s 22, 25, 61,85 of NDPS Act. Therefore the Ruqa is hereby sent to the police station for the registration of case against Jaspreet Singh @ Jajju, Harjinder Singh @ Bali through constable Tejinder Singh 216 PS City Jagraon. The special reports u./s 42 NDPS Act is hereby sent to the office of Halka Jio through constable Tajinder Singh 216. Number be informed after the registration of case. DCR be informed. 1, SI, along with the police party am present at Jhansi Rani Chwonk. Investigating officer be sent at the spot. Today in the jurisdiction of Jhansi Rani Chwonk at 06:20 PM SD/ SI Gursewak Singh 298 CI Staff Jagraon, Distirct Ludhiana Rural.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case, as no recovery has been effected from his possession. It is further contended that the petitioner along-with the co-accused was going on their motorcycle when they were stopped by the police officials and to save the actual culprits, the petitioner and co-accused were falsely



implicated in this case. The alleged recovery i.e. 1200 intoxicating tablets was effected from the seat of the motorcycle and not from the conscious possession of the petitioner. He seeks parity with co-accused Harjinder Singh @ Balli who was granted the concession of regular bail by this Court vide order dated 01.04.2024 passed in **CRM-M-34974-2023**. He further submits that the petitioner is behind the bars for last 2 years, 2 months and 2 days and no fruitful purpose would be served by further keeping the petitioner behind the bars as the conclusion of trial would take considerable amount of time as out of total 12 Prosecution Witnesses, only 3 PWs 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 last 2 years, 2 months and 2 days.

Learned State Counsel on instructions from Investigating Officer opposes the prayer for grant of regular bail on the ground that alleged recovered contraband is of commercial nature, but is not in a position to controvert the submissions as made by the counsel for petitioner. He informs the Court that in the instant FIR challan stands presented on 01.12.2022 and charges stand framed on 19.12.2022.



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, 2 months and 2 days and similarly situated co-accused has already been granted concession of regular bail by this Court, further the antecedents of the present petitioner are clean, meaning thereby he is not a habitual offender. As per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond a reasonable doubt, whereas in the instant case, challan stands presented on 01.12.2022 and charges stand framed on 19.12.2022 also, out of 12 prosecution witnesses, only 3 have been examined yet which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of 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 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 aforesaid 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.

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

23.08.2024
anuradha

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