



211 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-40440-2024

Date of Decision: September 19, 2024

KULJIT SINGH ALIAS KULJIT SINGH ALIAS KOLI

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman Kumar, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG, 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.256 dated 15.07.2019, under Sections 22, 61, 85 of NDPS Act, 1985 registered at Police Station Phillaur, District Jalandhar Rural.

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

'Senior Officer, P.S. Phillor "Jai Hind" today along with ASI HC Paramjit Singh 495/Jalandhar, PHG Jeevan Lal 28100 on patrolling duty to search for suspected persons from Phillor to Ganna village, Bhaini etc. When the police party reached Y Point Talwan chowk Phillaur Pass, a haircut young man came on foot towards the side of Ganna village, who immediately started turning back after seeing the police party. Who threw the polothin bag, he was holding in his left hand on the side of the road. ASI controlled him with the help of colleagues and asked for his name and address. Who said that his name is Kuljit Singh @ Koli son of



Jagjit Singh, resident of Khursaidpur, police station, Sidhwan Bet at present resident of Rajapura police station, Laiwal district, Ludhiana. On which saw the bag thrown on the roadside in which two drug injections marked Avil fell out of the bag. On which the offense is found to be made u/s 22-61-85 NDPS ACT.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that it is only a recovery of two Avil injections as per the version narrated in the FIR dated 15.07.2019 (Annexure P-1) whereas before the trial Court at the time of arguments on the second application seeking regular bail, the prosecution case was set up reflecting recovery of 11 injections of mark LEEGESIC 2 ml each containing Bupernorphine Hydrochloride and it does corroborate the recovery qua two injections of Avil.

Attention of this Court has been drawn to the challan as framed under Sections 173 Cr.P.C. dated 16.12.2019 (Annexure P-3) wherein, also as per the narration of the FIR, recorded recovery shown is of two Avil injections only but while concluding the report, simplicitor it has been mentioned as 11 injections of make Avil and 11 injections of make Leegesic as recovered and after preparing separate parcels of the recovered injections, it was taken into possession.

There is serious contradiction in the case of the prosecution at three stages till now, which raises a debatable issue before the trial Court and the prosecution has to establish by leading evidence, its case, in order to remove the aforesaid discrepancies.

**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 11 months 09 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of concession of regular bail asserting that petitioner is involved in other identical cases, but perusal of the custody certificate would depict that the petitioner is on production warrant in three cases out of which one is under the Excise Act and the other two under the NDPS Act registered at Police Station, Laddowal.

4. Analysis

This Court after giving a thoughtful consideration to the submissions as made, by the counsel for both the parties and in consonance with the submissions made on behalf of the petitioner, that according to the instant FIR recovery effected is only of two injections of Avil whereas in the challan subsequently prepared on 16.12.2019 (Annexure P-3) 11 injections of make Avil and 11 injections of make Leegesic have been shown to be recovered. Such recovery raises a doubt in the prosecution and even 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 05.11.2023; charges stand framed on 13.12.2023, there are total 08 prosecution witnesses, out of which only 02 prosecution witness have been examined, 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**



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 concession of bail.

5. **Decision:**

In view of the aforesaid discussions made 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

19.09.2024
Sangeeta

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