



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40436-2024

DECIDED ON: 28.08.2024

GAGANDEEP NAGPAL ALIAS GAGAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief sought

The jurisdiction of this Court has been invoked for the fourth time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.68, dated 29.06.2022, under Sections 22 and 29 of the NDPS Act, No.61 of 1985, registered at Police Station Bahavwala, District Fazilka, Punjab.

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

“To, the Station House Officer, Jai Hind, today myself ASI along with HC Jagjit Singh No.913, CT Chintu Singh No. 1251, PHG Rattan Lal No. 6608 and PHG Bohar Singh No. 6543 on government car were present regarding barricading at Main Chowk Seeto Gunno then a Swift car bearing registration No. HR51-V-7903 colour

car came from Sadool shehar (Mateeli) and myself ASI has given signal with the help of torch to stop the said car then the driver of said car has stopped his car at some distance back from the barricading, then myself ASI has apprehended the persons sitting in the car with the help of associate officials and asked their whereabouts, then the driver of the car has stated his name as Gagandeep Nagpal @ Gagan son of Madan Lal son of Ram Lal resident of Alam Wala, Tehsil Malout District Sri Muktsar Sahib, at present resident of Rehmat Colony, Shah Satnampura Sirsa (Haryana) and the person sitting on the adjoining seat of car has disclosed his name as Gori Singh @ Gori son of Gurjant Singh resident of village Karwasra Hospital wali Gali, Indira Nagar, Mandi Dabwali, District Sirsa (Haryana. Myself ASI has introduced them about me and said that I, ASI Manjit Singh posted as Incharge, Police Post Seeto Gunno and I have doubt that there is some intoxicant material in your possession as well as in your car, therefore the search of you and your car is required to be conducted but you have legal right that you can get done the search of you and your car through any Gazetted officer or Magistrate, who can be called to the spot then both the said persons said that we want to get done the search of us and our car through any Gazetted officer (senior officer). Therefore myself ASI has prepared their separate non-consent memos. Gagandeep Nagpal and Gori Singh have appended their respective signatures on the refusal memos in English and witnesses have also appended their signatures on the memos. Thereafter myself ASI has informed to Sh. Avtar Singh, PPS, Deputy Superintendent of Police, Sub division, Abohar (Rural) through my mobile phone and after inform him about the facts, requested to come to the spot. After some time, Sh. Avtar

Singh, Deputy Superintendent of Police along with his staff came to the spot through their government vehicle, who informed above said Gagandeep Nagpal and Gori Singh that I, Avtar Singh, PPS, am posted as Deputy Superintendent of Police Sub Division (Abohar) and I am Gezatted officer of Government of Punjab. I have doubt that there is some intoxicant material in your possession as well as in your car, therefore the search of you and your car is required to be conducted but you have legal right that you can get done the search of you and your car through any Gazetted officer or Magistrate, who can be called to the spot then both the said persons said that we have trust upon you, you can conduct the search of us and our car. Therefore Deputy Superintendent of Police sir has prepared their separate consent memos. Gagandeep Nagpal and Gori Singh have appended their respective signatures on the consent memos in English and witnesses have also appended their signatures on the memos. AS per the instructions of Deputy Superintendent of Police sir, prior to conduct the search of above said persons, the efforts were made to join any public witness in the police party but nobody was found there, therefore the search is conducted in the presence of witnesses then a black and purple colour back was lying in between the both of front seats of car, opening and choking the said bag, strips of intoxicant tablets are found. On counting of said strips, 135 strips each strip contains 10-10 tablets, total 1350 tablets are recovered, all the above said recovered 135 strips. are of Tramadol Hydrochloride Tablets 100 Mg. Clobedol-100 SR having batch No. ALT2007, MD 04/2022, ED- 03/2025. All the strips put into same bag and thereafter putting the said bag into a cloth bag, turned the same into parcel and sealed the parcel with my seal bearing impression AS and also

attested form M29 by appending my seal bearing impression AS. After using seal by Deputy Superintendent of Police sir, he has kept the same with him. thereafter the parcel said duly recovered intoxicating tablets duly sealed with seal bearing impression AS, sample of seal on form M29 and car bearing registration No. HR51-V-7903, has been taken into police possession through memo. The witnesses have appended their respective witness on the memos and Deputy Superintendent of Police has also attested the seizure memo. Gagandeep Nagpal and Gori Singh have committed offence under section 22-61-85 of NDPS Act by keeping 1350 intoxicant tablets into their possession. Therefore after writing Ruga, the same is being sent to the Police Station by the hand of G Rattan Lal, after register case, number of the same be intimated. Special reports be issued, PCR/EZK be intimated through proper channel. I am busy for investigation on the spot. sd/- Manjit Singh, ASI, I/C, PP Seeto Gunno, Police Station Bahawala, dated 26.09.2022."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story the recovery of 1350 tablets of Tramadol Hydrochloride 100 mg was effected from the alleged vehicle, which was being driven by the present petitioner. He further contends that co-accused of the petitioner, namely, Gori Singh @ Gori has been granted the concession of regular bail by this Court vide order dated 15.01.2024 passed in CRM-M-11146-2023. It has been submitted on behalf of the petitioner that there is no-compliance of Section 50 of the NDPS Act.

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 recovery of 1350 tablets of Tramadol Hydrochloride 100 mg was effected from the alleged vehicle, which was being driven by the present petitioner, who is a habitual offender as he is involved in two more cases, wherein he is on bail in one case and on production warrants in another case.

4. Analysis

Be that as it may, considering the custody period i.e. 02 years, 01 month and 26 days for which the petitioner has suffered incarceration; co-accused of the petitioner, namely, Gori Singh @ Gori has been granted the concession of regular bail by this Court vide order dated 15.01.2024 passed in CRM-M-11146-2023 added with the fact that investigation is complete, challan stands presented to Court on 14.12.2022, charges were framed on 06.01.2023 and out of total 08 prosecution witnesses, only three witnesses have been examined so far, 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 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 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 concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby 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.

28.08.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*