

CRM-M-41634-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(227)

CRM-M-41634-2024
Date of Decision : 02.09.2024

Rajat Arora

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.S. Deol, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.0157, dated 14.07.2022 under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 21/29/25/21-C of NDPS Act as mentioned in impugned order dated 06.02.2023) registered at Police Station Special Task Force, STF Wing, Ludhiana Range, District Ludhiana, Punjab.

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

“Statement of ASI Paramjit Singh No.462/Ldh, Special Task Force, Ludhiana Range, age about 50 years (Mobile No.9876110462). Stated that I am posted at Special Task Force, Ludhiana range. Today I alongwith ASI Sukhdev Singh No.2402/Ldh, ASI Rajesh Kumar No.100/75 PAP, Constable Harpreet Singh No.4C/718, Constable



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Tarlochan Singh No.4073/Ldh and lady constable Manpreet Kaur No.3479/Ldh. on government vehicle Bolero bearing registration No.PB-10FH-1112, driven by Constable Simratpal Singh No.881/Khanna, were present in search of smuggler at Flower Chowk Dugri Area, Police Station Sadar, Ludhiana, the time will be 12:15 PM and special informant came and informed me that accused Ajaypal Singh son of Manjit singh resident of H.No.8860/1, Gali No.28, Kot Mangal Singh, Police Station Division No.6, Ludhiana, aged about 32 years and Rajat Arora @ Raju son of Harbans Lal, resident of H.No.105/1, Manak Enclave Police Station Ludhiana, aged about 32 years, against whom there are also cases of drug trafficking, who have been doing the illegal business of selling heroin together for a long time. They have to go towards Ludhiana from their House No.105/1, Manak Enclave, Ludhiana on Honda City Car bearing registration No.PB-10-FP-2570 colour silver for supplying of Heroin to their customers. If now the house No.105/1 Manak Enclave kept under surveillance, then Ajaypal Singh and Rajat Arora @ Raju above said can be apprehended with above said car with huge quantity of Heroin. The information provided by special informant is true and reliable, regarding which I have already given information to you. In this connection, you have prepared report under section 42 of NDPS Act and sent through constable Tarlochan Singh No.4073/Ldh at about 12:30 PM to senior official. I have recorded my statement to you according to the information provided to special informer. Statement heard, read which is true. Action be taken. Sd/ Paramjit Singh ASI."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has



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been falsely implicated in this case. There is no evidence against the present petitioner which would connect him with the alleged commission of offence. Learned counsel for the petitioner submits that alleged recovery of contraband weighing 650 grams of Heroin was from the gear box of the Honda City car, silver colour, bearing registration No.PB-10-FP-2570, which does not belong to the present petitioner. Though, the contraband recovered is commercial in nature, it does not weigh in on the mind of the Court for consideration of the present petition in light of the settled law by Hon'ble the Supreme Court in ***'Dataram versus State of Uttar Pradesh and another' 2018(2) R.C.R. (Criminal) 131*** that *'bail is a rule and jail is an exception'* and right to speedy trial is enshrined under Article 21 of the Constitution of India even for the accused as per the law laid down in ***'Hussainara Khatoon and ors (IV) vs. Home Secretary, State of Bihar, Patna' (1980) 1 SCC 98***. The petitioner is behind the bars since 14.07.2022 and has undergone 02 year and 01 month and 16 days in custody, investigation in this case is complete. Challan stands presented on 09.01.2023 and charges framed on 02.02.2023. Since framing of the charges, out of total 18 prosecution witnesses, only two witnesses have been examined till date. Petitioner happens to be involved in other criminal cases or under the NDPS Act and Excise Act, as detailed in the custody certificate. The trial of the case is moving at a snail's pace and may take considerable amount of time to conclude and therefore, further incarceration of the petitioner would serve no useful purpose.

Notice of motion.

On behalf of the State

4. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab accepts



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notice on behalf of the respondent-State and has produced the custody certificate dated 01.09.2024 of petitioner, which is ordered to be taken on record and on instructions from the Investigating Officer, vehemently opposes the grant of concession of regular bail to the petitioner on the ground that allegations against the petitioner are of serious nature and has other antecedents, therefore is a habitual offender. However, he could not controvert the custody period undergone by the petitioner.

5. **Analysis**

Investigation in this case is complete and challan stands presented on 09.01.2023 and charges framed on 02.02.2023. Out of the total 18 prosecution witnesses, only two witnesses have been examined to date which makes it apparent that trial of the case may take considerable amount of time to conclude therefore, no useful purpose would be served by further incarceration of the petitioner.

Hon'ble the Supreme Court in the 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 also 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 are 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) vs. 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.

6. **DECISION**

Be that as it may, considering the aforesaid facts and circumstances, investigation in the present case has already been completed and challan stands presented on 09.01.2023. Trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner behind the bars. Accordingly, the petitioner is directed to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In light of the aforesaid discussions, the present petition is, hereby, allowed.

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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

September 02, 2024
Manpreet

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