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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43400-2023

DATE OF DECISION: 05.08.2024

BINA KUMARI

..PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kashav Chadha, Advocate and
Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 186, dated 11.09.2019, under Sections 18 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act added later on) registered at Police Station Goraya, District Jalandhar.

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

'Today, SI was present at the Police Station and then SI Jagdish Raj 798/TT through mobile informed me that he along with ASI Om Prakash 384, ASI Jaswant Singh 861, C Gurpreet Singh 1704 and St Surjeet Singh 356, HC Jasvir Singh 386. C Gurwinder Singh 1892 and fourth class Harjeet Singh are patrolling in a private vehicle in search of bad and suspicious



persons and had done Nakabandi at National Highway near DK Morya Dhaba, raqba Kutbewal and were present on the GT road which was going from Phillaur to Phagwara and was doing the checking of vehicles and then one Scorpio car colour white bearing no. PB02-CA-4229 was seen coming from Phillaur side. SI along with the help of other police officials signalled the said car to stop, but the driver of the car immediately applied the brakes and tried to reverse the car back and tried to ran away. The person who was sitting next to the driver seat after opening the windows of the car threw one heavy polythene on the side of the road. Si along with the help of other police officials apprehended the above said car by surrounding the said vehicle and brought down the person who was driving the car and asked him about his name and address and then the person who was driving the car disclosed his name as Karamjit Singh S/O Teja Singh ro village Nijjar. PS Kalchiya. District Amritsar and the person who was sitting next to driver seat disclosed his name as Gurpreet Singh @ Lovely S/O Rawal Singh R/O Village Chungi, PS Mehta, District Amritsar. I on asking accused Karamjit Singh and Gurpreet Singh that what they had thrown out of the car in polythene and they said that the said polythene is having opium. As per new guidelines you are being informed, you reach at the spot for investigation. On this SI along with HC Jaswinder Singh 389 reached at the spot where SI Jagdish Raj disclosed me about the circumstances orally and the Si disclosed his name, rank and place of posting to the apprehended persons and asked them about name and address and the driver of the car disclosed his name as Karamjit Singh S/O Teja Singh r/o village Nijjar, PS Kalchiya, District Amritsar and the second person disclosed his name as Gurpreet Singh @ Lovely S/O Rawal Singh R/O Village Chungi, PS Mehta, District Amritsar. On my instructions Karamjit Singh and Gurpreet Singh who had thrown polythene outside, picked up the same and presented before me. Before



searching the polythene SI tried to join independent witness from public, but everyone showed their helplessness. St at the spot tried to make join Sarpanch, Panch and Numberdar of Village Atta, Mansoorpur, Ratbawal, but even they could not be made as witness. Then SI in presence of other police officials after opening the mouth of recovered plastic polythene, checked the same and the same was having opium. Arrangements of bringing electronic weighing machine was being done by C Gurpreet Singh 1704 and on weighing the weight of the same came out to be 3kg 500 grams. The recovered opium was being put in one plastic box and the parcel was prepared on which SI affixed his seal KS and form M-29 was prepared and separate parcel was also prepared. After affixing the seal the same was handed over to SI Jagdish Raj 798. The recovered parcel of opium and car bearing no. PB02-CA-4229 make Scorpio was being taken into Police possession vide separate recovery memo. On the memo the witness affixed their signature. On the spot Karamjit singh and Gurpreet Singh for keeping in their possession 3kg 500 grams of opium and they could not produce any license. Accused Karamjit singh and Gurpreet Singh for keeping in their possession 3kg 500 grams of opium have committed an offence under section 18-61-85 of NDPS, Act. After registering the ruqa the same is being sent to the police station at the hands of C Gurpreet Singh 1704. After registering the FIR, the number may be intimated. Special reports be prepared and sent to senior police officials. Control room may be intimated through wireless. Si along with other police officials are present at the spot. Sd/- Kulwant Singh SI, PS Goraya, dated 11.09.2019, raqba GT Rutbawal at 7:30am, Latitude-31.0900506, Longitude-75.779842.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that no recovery has been effected from the petitioner and he was named only on the basis of disclosure statement of the co-accused namely Karamjit @ Karanjit Singh who is the husband of the petitioner. The petitioner has been in custody for last almost 8 months and is not involved in any other case. He submits that investigation is complete as supplementary challan stands presented on 11.10.2023 and charges have been framed on 23.03.2024. He has further argued 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 14 Prosecution Witnesses, only one witness has been examined so far. He further points out that the main accused Karamjit @ Karanjit Singh has already been granted the concession of regular bail by this Court vide order dated 09.01.2023 passed in CRM-M-35738-2022 and another co-accused namely Gurpreet Singh @ Lovely has also already been granted the concession of regular bail by this Court vide order dated 10.04.2023 passed in CRM-M-4014-2023.

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 7 months and



29 days.

Learned State Counsel submits on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner had earlier been declared P.O. vide order dated 09.02.2023 and later was arrested on 07.06.2023 but is not in a position to controvert the submissions made by counsel for the petitioner.

4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 7 months and 29 days, the petitioner is not involved in any other case, meaning thereby he is not a habitual offender, co-accused have already been granted concession of regular bail, the petitioner was named on the basis of disclosure statement 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 11.10.2023 and charges have been framed on 23.03.2024, out of 14 prosecution witnesses, only one PW has 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.

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 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.

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/her 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

05.08.2024
anuradha

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