

CRM-M-41448-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CRM-M-41448-2024 (O&M)
Date of Decision : 02.09.2024

Gabhar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 439 of Cr.P.C., for grant of regular bail to the petitioner in case FIR No.292, dated 30.10.2020 under Sections 20 and 61 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Phagwara, District Kapurthala, 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 554/KPT CIA Phagwara District Kapurthala Mobile No. 82880-84235 stated that I am doing duty at CIA Phagwara as investigation officer. I ASI including ASI Swaran Singh 1177/KPT, C Balwinder Singh, C Jagrup Singh 860 KPT were present on Government vehicle bearing No. PB 091-9773 which was being driven by ASI Jaswinder Singh, 128KPT for checking suspicious persons and suspicious vehicles to



conduct raids were going from Heir Palace to Jhajj Colony. When the police party was 50 meters behind the FSI hospital, then one turbaned young man was seen coming forward with a heavy poly bag being held in the hand. Who on seeing the police party, tried to turn back after dropping the bag in his right hand. I ASI, with the help of his fellow employees, apprehended him and asked his name and address. Who gave his name as Gabhar Son of Roshi resident of Jhajj Colony and when I asked about the bay lying in the garbage that what is in it. He told that it contains Ganja, which I have thrown in the garbage, which was held in my right hand in order to save myself. In this regard, I informed Inspector Onkar Singh Brar 133 through Mobile that an investigating officer be sent for investigation, hence you have reached on the spot for the same. I have recorded statement before you, heard it and it is correct SD/ Paramjit Singh ASI No: 554/ KPT CIA Phagwara District Kapurthala Dated 30-10-2020 Verification by Gurmeet Singh ASI PS Industrial Area PS City Phagwara Date 30/10/2020 Action Police: Today 1 ASI Along with fellow employees HC Harvinder Singh No. 89KET, HC Gurdev Singh No. 1563 KPT were present on barricading for search of anti-social elements near Stan Auto. One call was received from City Phagwara that ASI Paramjit Singh No. 554KPT CIA staff Phagwara Nayak has apprehended one young man in Jhajj Colony along with Ganja and hence reach for action. For which I ASI along with HC Harwinder Singh No: 69KFT and HC Gurdev Singh 1563/KPT reached on the spot where AS. Paramjit Singh 554 KPT met us and recorded his statement with me and the same was written and read, who signed his statement in Punjabi on finding the same to be true. Which I verified. ASI Paramjit Singh No: 554 KPT with the help of fellow employees had apprehended young



man was asked about the name and address. Who gave his name as Gabhar son of Roshi resident of Jhajj Colony near ESI Hospital Phagwara Industrial Area. We tried to join the public witness before checking the bag, color white which was thrown by the above young man, but none of the public witnesses joined the police party due to their own compulsion. Then I, ASI, in front of fellow employees checked the bag thrown by accused Gabhar. Wherein ganja was recovered. Weighing the ganja that was recovered, by arranging weighting machine, then the Weight came out to be 1 kg 500 grams. The case property Ganja was sealed with his stamp letter GS. Sample of the stamp was prepared separately and after the use, the stamp was handed over to HC Harvinder Singh No: 69 KPT. The case property Ganja weighing 1 kg, 500 grams of plastic bag, color white, was seized by police as evidence. The said above accused Gabhar by keeping in his possession one and a half kilograms of ganja has committed the offense of 20/61/85 NDPS Act. Hence after writing ruqqa, the same is being sent by hand through HC Gurdev Singh No: 1563KPT to Police Station City Phagwara. After registration of case, the FIR number should be intimated. Control room maybe informed through wireless. Special reports should be prepared and sent to the service of higher officers. I, ASI present on the spot, busy in investigation-SD/- Gurmeet Singh ASI Police Post Industrial Area, PS City Phagwara. Dated 30/10/2020.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in this case. There is no evidence against the present

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petitioner which would connect him with the alleged commission of offence. Learned counsel for the petitioner submits that it was a chance recovery of contraband weighing 1kg. 500 grams of *Ganja*, sent to FSL for examination, which confirmed it to be a *Charas*, which is also the story of the prosecution. The petitioner is behind the bars since 23.04.2023 and has undergone 01 year and 05 months by now in custody, investigation in this case is complete. Challan stands presented on 16.11.2021 and charges having been framed on 05.08.2023. Since the framing of the charges, out of total 09 prosecution witnesses, only one witness has been examined yet. Petitioner happens to be involved in other criminal cases, 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 notice on behalf of the respondent-State and has produced the custody certificate dated 31.08.2024 of petitioner, which is ordered to be taken on record and on instructions from the Investigating Officer, vehemently opposes the concession of regular bail to the petitioner on the ground that allegations against the petitioner are of serious nature and the petitioner is also having other antecedents meaning thereby that petitioner 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 16.11.2021 and charges framed on 05.08.2023. Out of the total 09 prosecution witnesses, only one witness has been examined as on 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 16.11.2021. 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.

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