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

CRM-M-42558-2024 (O&M)
Date of Decision: September 05, 2024

JOGRAJ @ JOGA**....Petitioner(s)****VERSUS****STATE OF PUNJAB****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Anmol, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 has been invoked seeking the concession of regular bail for the petitioner in FIR No.362 dated 12.12.2022, under Sections 21(c), 29 of NDPS Act, 1985 and Section 25 of Arms Act, 1959 registered at Police Station Phillaur.

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

'To, the Station House Officer, Police Station Phillaur, Jai Hind, today myself ASI along with Gurnam ASI Singh No. Jalandhar, HC Kuldeep Singh No. 225/ 1795, CT Malkeet Pal No. 1743/Jalandhar, L/CT Sandeep Kumari No. 1625/Jalandhar on government Bolero bearing registration No. PB08-DG-5891 being driven by S/CT Daljit Singh No. 999/Jalandhar, were present at turning point Tehing, Maur, given where information a secret informer has myself ASI that to



Tarlochan Singh @ Tesa son of Paramjit Singh resident of Kushropur, District Jldh and Jograj Singh @ Joga son of Pritam Singh resident of village Dheerpur, District Jalandhar are doing the supply illegal Heroin and illegal weapons in different districts and cities of Punjab. Today also they came in the area of Phillaur for the supply of Heroin and illegal weapons and presently they stood at Verka Booth near old bus stand Phillaur. If immediate raid be conducted and after apprehending them, their Kit bags be searched then huge quantity of Heroin and illegal weapons can be recovered from the said Kit bags. Since the information is true and reliable, therefore the said act of accused is covered under section 21-61-85 of NDPS Act and section 25-54-59 of Arms act, therefore after writing Ruqa, the same is being sent to the Police Station by the hand of L/CT Sandeep Kumari No.1625/Jalandhar for registration of case, after register case, number of the same be intimated. Control room be intimated through wireless. After issuing special reports, the same be sent to the senior officers and Ilaga Magistrate. Myself ASI along with associate officials is going for raid at Verka Booth near Old Bus Stand GT Road Phillaur. Today within the area Nawanshahar Bus Stand at 5.00 of PM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner would contend that the petitioner has been falsely implicated in the present case and has been in custody since 12.12.2022. He contends that the petitioner was not arrested at Verka Booth, Phillaur but was actually picked up from a place which was more than 50 kms away from the place of arrest as shown by the police. He also contends that CCTV footage of Phillaur and phone tower locations of mobile No.82830-70101, 82830-69769, 84278-06366 have already been placed in the custody of trial Court that would determine the place of arrest of the petitioner denying the story of the prosecution. Learned counsel for the petitioner, thereby

further contends that the co-accused namely Tarlochan Singh @ Tosha has



already been granted the concession of regular bail by this Court vide order dated 16.07.2024 passed in CRM-M-27282-2024 (Annexure P-4).

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 01 year 08 months 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 01.05.2023, charges stand framed on 06.07.2023 and there are three other FIRs pending against the petitioner.

4. Analysis

From the above case it can be culled out that there is a dispute qua the arrest of the petitioner and the case would be tested at the strength of the evidence in the form of CCTV footage and mobile tower locations qua the number of the cell phone used by the petitioner and his co-accused Tarlochan @ Tosha who has already been granted the concession of regular bail by this Court and apart from that the petitioner has already suffered the custody period of 01 year 08 months and 16 days, 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 01.05.2023, charges stand framed on 06.07.2023, out of 14 prosecution witnesses, only 02 have been examined yet 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 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 the 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 483 of Bhartiya Nagrik Suraksha Sanhita, 2023, on his 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

05.09.2024
Sangeeta