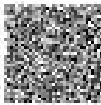


207

2024-PHHC-116804



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42761-2024 (O&M)
DECIDED ON: 06.09.2024

INDERJEET SINGH @ INDERJIT SINGH @ SHERA
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ramnish Puri, 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 second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.164, dated 02.07.2023, under Section 21 of NDPS Act, registered at Police Station Jandiala Guru, District Amritsar (Rural).

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

*“To the SHO, Police Station Jandiala Guru, Jai hind,
Today I INSP/SHO along with ASI Balkar Singh 1143,
ASI Rachpal Singh 1904, Constable Amarjeet Singh
1806, Constable Manjinder Singh 1473 on government
vehicle, whose driver is ASI Gurpreet Singh 1219 along*

with personal laptop & printer, in relation with search of bad elements present from the link road Village Wadala to Chitu Kalan Road at Chitu Kalan Road. That from the side of Village Chitu Kalan towards Village Wadala, saw one youngster walking, that seeing the police party went towards the fields, whom after apprehending by I INSP/SHO with the help of fellow employees, asked his name & address who told his name viz Inderjeet Singh alias Shera son of Baldev Singh resident of Gopal Nagar, Jandiala Guru, to whom I INSP/SHO while disclosing my identity that I Inspector Balwinder Singh, Posted at Police Station Jandiala Guru as SHO, I wore the uniform & name plate is attached. That you came to know my rank and name. I have a suspicion on you for possessing some intoxicant substance. You have a legal right that your search could be conducted by me or by some Gazetted Officer or Magistrate, who could be called on the spot here or arrangement could be made to take you to them. Upon which, the apprehended Inderjeet Singh above told that I want to get search conducted in presence of any Gazetted Officer, thereafter, dissent memo by I INSP/SHO was prepared and I INSP/SHO through telephonically explained the situation to Shri Kuldeep Singh PPS DSP Sub-Division Jandiala and asked to come to spot. That after some time, Shri Kuldeep Singh PPS DSP Sub-Division Jandiala along with personal staff on government vehicle came on the spot, who while disclosing his identity to the apprehended Inderjeet Singh alias Shera above that I Shri Kuldeep Singh PPS DSP Sub-Division Jandiala and a Gazetted Officer of Punjab Government. I have worn the uniform and name plate is attached. Now you are known about my name and rank. my rank and name. I have a suspicion on you for possessing some intoxicant substance. You have a

legal right that your search could be conducted in presence of any Magistrate or any Gazetted Officer, who could be called on the spot here, on which the accused Inderjeet Singh alias Shera above told that I have faith upon you, you could search me in your presence. Upon which, memo consent is prepared and in the presence of DSP and fellow employees I INSP/SHO conducted the search of the apprehended Inderjeet Singh alias Shera above, beneath the pant, from the right pocket of underwear wore by him, one weighed plastic polythene got recovered. Why is checked after opening, from it heroin got recovered. Which is weighed on the electric scale along with plastic polythene, 265 grams, which is kept in the box plastic for preparation of parcel. On the parcel I INSP/SHO put my seal named BS and DSP put his seal named KS. Sample seal BS/KS got prepared. I INSP/SHO handed over the seal to ASI Rachpal Singh 1904. DSP kept the seal to himself after usage. Recovered heroin 265 grams vide separate memo taken into police custody. The accused Inderjeet Singh alias Shera above having possession of 265 grams heroin committed offence u/s 21-61-85 NDPS ACT. Upon which, after writing rugga for registration of FIR sent manually through Constable Amarjeet Singh 1806 to Police Station. After registration of FIR, the number kindly be intimated. After preparation of Special Report, sent in the service of Higher Officials and Area Magistrate. Control Room kindly be intimated. INSP/SHO along with fellow companions is busy at the spot conducting investigation. In the Area: - Village Wadala round-about Chitu Kalan. AT: - 04:25 PM. SD/- Balwinder Singh, INSP, SHO Police Station Jandiala. Date: -02.07.2023”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the quantity of alleged contraband i.e. 260 grams of heroin is marginally over and above the commercial quantity. He further contends that since the date of earlier withdrawal of the bail petition of the petitioner on 06.05.2024, three dates have been taken by the prosecution but no witness has been produced or examined on its part. It has been asserted on behalf of the petitioner that the mandatory provision of Section 50 of the NDPS Act has not been complied with as the personal search of the petitioner was not conducted in the presence of Gazetted Officer.

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 petitioner is a habitual offender as he is involved in one more case i.e. FIR No.154, dated 27.06.2023, under Sections 21 and 29 of NDPS Act, registered at Police Station Jandiala, wherein he is not on bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 02 months and 01 days for which the petitioner has suffered incarceration; the quantity of alleged contraband i.e. 260 grams of heroin is marginally over and above the commercial quantity; non-compliance of Section 50 of the NDPS Act; since the date of withdrawal of the earlier bail petition of the petitioner, no witness has been examined till date by the prosecution in addition to the fact that investigation is complete, challan stands presented to

Court on 27.12.2023, charges were framed on 25.01.2024 and out of total 11 prosecution witnesses none has 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.

06.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No