



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42616-2024
DECIDED ON: 05.09.2024

JASPAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Thakur, 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 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.147, dated 31.10.2022, under Section 22 of NDPS Act, 1985, registered at Police Station Lohian, District Jalandhar Rural.

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

“SHO, Police station Lohian. Jai Hind. Today I ASI Kashmir Singh No. 542/ Jal, S/Ct Ramadeep Singh 1310/Jal, S/Ct Harjinder Singh No. 1268 were on patrolling and checking duty in connection with the search of bad elements were present at Brick kiln at Adda Kang Kalan then one person was seen coming on foot from the side of village Kang khurd, who on seeing the police party, took out a heavy polythene bag from the left

pocket of the lower worn by him and tried to turn back, upon which I ASI on the basis of the suspicious, along with the help of the other official companions apprehended him and enquired about his name and address. On enquiry he disclosed his name as Jaspal Singh son of Gurdail Singh resident of Jalarpur Khurd, P.S. Lohian, District Jalandhar. Before checking the polythene bag thrown by him on the road side, on the grass, I tried to join the public witness in the police party but all the witness showed their un-willingness. I ASI, in the presence of other officials checked the polythene bag, loose white tablet was recovered. Then I ASI, on counting the loose white colour tablets, they were 50 intoxicating tablets. The recovered tablets were packed in the same polythene bag and were put in plastic container and a parcel was prepared and was sealed with the seal JS. Form M-29 was also prepared at the spot. After using the seal the seal was handed over to ASI Kashmir Singh No. 542/Jal. The accused Jaspal Singh son of Gurdail Singh resident of Jalarpur Khurd, P.S. Lohian, District Jalandhar for having in possession 50 white colour loose tablets has committed offence under section 22-61-85 of the NDPS, Act. Ruga is being sent to the police through hand S/Ct Harjinder Singh No. 1268/Jal.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that it is a case of chance recovery, wherein 50 intoxicant tablets were recovered from the present petitioner, as per the prosecution story. It has been contended on behalf of the petitioner that mandatory provision of Section 50 of the NDPS Act has not been complied as the personal search of the petitioner was not conducted in the presence of Gazetted Officer. He further contends that the

no useful purpose would be served by keeping the petitioner behind the bars as he is in custody since 31.10.2022 and the conclusion of the trial will take a long time. The petitioner is not involved in any other meaning thereby he is a man of clean antecedents, as has been argued by learned counsel for the petitioner.

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 50 intoxicant tablets containing salt Etizolam were recovered from the present petitioner, which is commercial in nature.

4. **Analysis**

Be that as it may, considering the submissions made hereinabove and the facts that the story of the prosecution is highly improbable which raises doubt in the mind of this Court that false implication of the petitioner cannot be ruled out atleast for grant of regular bail; the petitioner has suffered incarceration for a period of 01 year, 02 months and 03 days; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court, charges were framed on 16.08.2023, out of total 09 prosecution witnesses, only 02 witnesses have 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.

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.

05.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No