



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

CRM-M-43905-2024

Date of Decision: September 11, 2024

GURBAZ SINGH

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sukhbir Maandi, Advocate for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

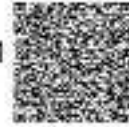
The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.77 dated 10.05.2023, under Sections 21(C), 29, 61, 85 of NDPS Act, 1985, registered at Police Station Sirhali, District Tarn Taran.

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

"To, SHO, Police Station Sirhali Kalan, Sat Sri Akal. Today myself ASI along with ASI Narinder Singh No.1300/TT, Constable Ravinder Singh No.1518/TT, Constable Saranjeet Singh No. 867/TT along with laptop printer were on operation Vigil and were in search of anti social elements on private vehicles and have gone from police station Sirhali Kalan and were present at the bridge over the drain at village Suhawa. That from the front on the road, 2 persons were seen coming on the left side and on seeing the police party in front in the uniform they got perplexed and one person after taking out one heavy polythene containing something from the left pocket of his wearing trouser thrown away on the left side of the road in the bushes and



himself turned backward and started moving hurriedly. On the basis of suspicion, myself ASI with the help of other officials got them apprehended. They were inquired about their names and addresses turn by turn and the first person disclosed his name as Daya Singh son of Piara Singh son of Pal Singh, resident of village Suhawa, P.S. Sirahli Kalan and second person disclosed his name as Gurbaj Singh son of Mosa Singh son of Khandi Singh, resident of village Suhawa, P.S. Sirahli Kalan. That myself ASI inquired from Daya Singh above said who is taken in custody that what are the contents of the plastic polythene which has been thrown by you on seeing us and then he disclosed that the same contains heroin which he has thrown away due to fear on seeing the police party and we both of us have brought it together. On this as per the directions of myself ASI, he after lifting the plastic bag from the ground presented the same before me ASI. I ASI checked the same after opening the same and the heroin was got recovered from it. That before weighing the recovered heroin, myself ASI tried to join the public witness into the police party but everyone disclosed their own constraints and do not got ready to join the police party. Thereafter myself ASI before weighing the recovered heroin lying in the plastic bag in the presence of the witnesses issued notice under Section 50(1) NDPS Act to Daya Singh above said and completed the proceedings. Thereafter, myself ASI with the help of electronic weighing machine already present in the kit bag with me weighed the heroine after taking out from the plastic bag and the total weight turns out to be 270 grams of heroin. Thereafter myself ASI kept the recovered heroin in the same plastic bag and thereafter in the same plastic box and parcel was prepared. Thereafter, myself ASI in the presence of the other officials sealed the parcel with my stamp DS was prepared separately. Thereafter myself ASI vide separate recovery memos took the parcel and sample stamp into police custody. Stamp after used was handed over to ASI Narinder Singh No.1300/TT. That before conducting the search upon the second person Gurbaj Singh above said in the presence of the witnesses notice under Section 50(1) of NDPS Act was issued to him and the proceedings were completed. Thereafter myself ASI conducted the search as per the rules



and during search nothing incriminating was got recovered from him. During inquiries he disclosed that he is friend of Daya Singh above aid and both of them together used to do the work of selling intoxicant substances and stated that the heroin which has been got recovered by you the same belongs to them. Since the recovery was a chance recovery as such other proceedings under the act could not be complied with regarding which the separate report under Section 57 of NDPS Act has been prepared and is being sent to the Deputy Superintendent of Police Sub Division Patti. Since accused Daya Singh and accused Gurbaj Singh above said by keeping 270 grams of heroin jointly in their possession have committed an offence under Sections 21(c)-29-61-85 of NDPS Act, thus the statement is being sent to the police station for registration of case by hand Constable Saranjit Singh No.867/TT. After registering the case, the FIR number be informed. After issuing the special reports, the same be sent to the Senior Officials, Myself ASI along with other officials is busy in investigation at the spot. Today within the jurisdiction of bridge over the drain at village Suhawa within the jurisdiction of Sarhali Kalan, time 03:50 PM, Sd/- Dilbag Singh ASI, PS Sarhali Kalan, dated 10.05.2023.

Today at Police Station:- At this time on receipt of above said statement at the police station the above said case and above said sections was got registered and the original statement along with the copy of FIR is handed over to the messenger ASI for handing over the same to the ASI at the spot for further investigation. After issuing the special reports the same are being sent by hand L/CT Daljit Kaur No.511/TT to Senior Officials and Illaqa Magistrate. Control room is being informed through email. Completion Rapat No.32..." . '

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The total recovery effected



from the co-accused namely Daya Singh is 270 grams of heroin but nothing was recovered from the present petitioner. Learned counsel for the petitioner submits that the petitioner has been in custody since 10.05.2023 and except for this there is no other case pending against the petitioner meaning thereby he is not a habitual offender. He further submits that co-accused namely Daya Singh and Bikkar Singh have already been granted the concession of regular bail by this Court vide orders dated 27.05.2024 passed in CRM-M-25992-2024 and 06.05.2024 passed in CRM-M-21186-2024, Annexures P-2 and P-3 respectively.

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 03 months 29 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 06.11.2023 and charges have been framed on 04.04.2024.

4. Analysis

From the above case it can be culled out that nothing has been recovered from the present petitioner; co-accused have already been granted the concession of regular bail by this Court and no other case is pending against the petitioner 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 06.11.2023; charges have been framed on 04.04.2024 and out of total 13 prosecution witnesses, none has 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 Nimesh 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.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. 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.

(SANDEEP MOUDGIL)
JUDGE

11.09.2024
Sangeeta

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No