



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45227-2024
DECIDED ON: 17.09.2024

JAGTAR SINGH @ MALLI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raj Kumar Chandana, 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 third time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.122, dated 14.06.2023, under Sections 21, 22 of NDPS Act, 1985 (Section 29 of NDPS Act added later on), registered at Police Station Dharamkot, District Moga.

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

“Station House Officer, Police Station Dharamkot "Fateh" Today, I, ASI along with HC Darshan Singh No. 1059/Moga, Sct. Kulwant Singh No. 1096/Moga, PHG Sukhdev Singh 11341 in government vehicle BOLERO NO. PB29H-4498 which was driven by Sct. Kulwant Singh in regard to patrol duty and search of suspicious persons was going from Police Post Kishanpura Kalan to

Village Chak Kannia Kalan, Gatti Jattan etc., when the police party came out from Police Post then adjoining to Bus Stand a person Mulla Fashion was seen standing to on seen the police party perplexed and out of the right pocket of the Lower which he was wearing pulled out a transparent polythene envelop threw it on the ground with speedy steps started walking towards outside then I, ASI with the help of companion employees nabbed and asked his name and address who disclosed his name as Sandeep Kumar alias Kukki son of Kishore Chand resident IDENT of Bhinder Kalan, to whom I, ASI apprised y identity told that "I ASI Ragwinder Prasad posted as In-charge at Police Post Kishanpura Kalan and I am wearing Uniform, name plate affixed to whom asked that I am doubt that the transparent polythene envelop which you have slice thrown there is some intoxicant material, due to which search of you and the polythene undi envelop thrown by you is to be made, but you have a legal right that in case if you want to got conduct your and the envelop in your possession can be got searched through some Gazetted Officer or some Magistrate to then can be called at the spot or can be produce you before them, upon which he said, " I have faith on you, you can conduct my search and the transparent polythene envelop thrown by me, upon which Notice Under Section 50 NDPS Act has been supplied to aforesaid Sandeep Kumar alias Kukki, on the notice the aforesaid Sandeep Kumar alias Kukki has put his signature in Punjabi and the witnesses have put their respective signatures. Upon which prior to search the transparent polythene envelop thrown by aforesaid Sandeep Kumar alias Kukki, has tried to join some public witness but every body have shown his difficulty, due to which no public witness could be jointed. Upon which

after got lifted the transparent polythene envelop through aforesaid Sandeep Kumar alias Kukki, opened and checked out of which light orange color intoxicant tablets have been recovered, the same after pulled out the same out of transparent polythene envelop counted which came to 58 intoxicant tablets, The recovered intoxicant tablets after put into the same polythene envelop after put it into a small cloth bag prepared a parcel and sealed the same with my seal bearing impression RP and sample seal on cloth parcel has been prepared separately, the seal after use has been handed over to HC Darshan Singh No. 1059/Moga. The recovered parcel of intoxicant tablets and sample seal have been taken into police possession through separate recovery memo, the signatures of the witnesses got put on the memo. On finding the prima facie offence under Section 22/61/85 NDPS Act by the aforesaid Sandeep Kumar alias Kukki, after writing present Ruga the same is being sent to Police Station through PHG Sukhdev Singh 11341 for registration of case. After registered the case, number be informed. Special Reports be issued PCR Moga and senior officers be informed. I, ASI along with companion employees am busy in investigation at the spot. sa/- Ragwinder Prasad ASI I/C PP Kishanpura Kalan Police Station Dharamkot dated 14.06.2023.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been nominated as an accused only on the basis of disclosure statement of co-accused Sandeep Kumar, from whose possession 58 loose intoxicated tablets were recovered. He further contends that nothing has been recovered from the possession of 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 the quantity of contraband is commercial in nature which comes to 7.77 grams containing Etizolam and the petitioner is involved in another FIR No.167 dated 03.8.2023, under Sections 22, 61, 85 of NDPS Act, registered at Police Station Dharamkot, wherein he is not on bail.

4. Analysis

Be that as it may, having considered the submissions made on behalf of either of the counsels including custody certificate, in the instant case, no recovery has been effected from the petitioner and whatever recovery was effected was from the main accused Sandeep Kumar, on whose disclosure statement alone the petitioner has been nominated as an accused.

In addition to above, considering the custody period i.e. 01 year, 01 month and 12 days for which the petitioner has suffered incarceration; investigation is complete, challan stands presented to Court on 07.10.2023, charges were framed on 12.10.2023 and out of total 11 prosecution witnesses, only one 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.

17.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No