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

CRM-M-44957-2024

Date of Decision: September 16, 2024

KANHIAAYA SAINI**....Petitioner(s)****VERSUS****STATE OF HARYANA****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

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.671 dated 29.07.2022, under Sections 22(C), 27(A), 29, 61, 85 of NDPS Act registered at Police Station City Karnal, District Karnal.

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

'Copy is as under, To the S.H.O. Police Station City Karnal, Jai Hind. Today dated 28.07.2022, I/SI alongwith SI Krishan Kumar 1191/KNL, HC Harpreet Singh 1067/KKR, EASI Surender Singh 799/Jind in government vehicle No.HR-05-GV-9783 Marka Scorpio,



whose driver is Constable Ajay Kumar 799/KNL while conducting of investigation of FIR No. 293 dated 24.07.2022 under Section 22-61-85 NDPS Act, got three days of police remand of accused Amit son of Prem Singh resident of village Sanoli, Police Station Sanoli, District Panipat, at present tenant Gali No.3, Shanti Nagar, Police Station Ram Nagar, District Karnal from the Hon'ble Court and after getting the accused Sagar son of Vijay Kumar resident of Gali No.6, Shiv Colony District Karnal lodged in District Jail Karnal, went to Kairana District in search Deepak Gujral and Kanhaiya Saini residents of Afgaanan Mohalla Kairana, District Shamli, when reached near Nirankari Chowk, Railway Road Karnal, then accused Amit Kumar told me/SI that 2/3 days ago I had called Deepak Gujral resident of Afgaanan Mohalla on mobile No.9520740983 from my mobile No. 9996741241 in order to place. an order of 2400 tablets of intoxicating tables of Alperamed 0:50 MG, Alprazolam Tablets without bill. Deepak told me that on dated 29.7.2022 Kanhayia Saini resident of Afgaana Mohalla Kairana, District Shamli who will come to the area of Karnal in morning to supply intoxicating tablets. I will send your order through Kanhayia Saini Kahayia Saini will meet you at a tea shop on the back side of old bus stand Karnal. After taking intoxicating medicines from Kanhaiya you can send me the money through Google. If at the back side of old bus stand search is conducted for Kanhayia and his search is conducting after apprehending him, then huge quantity of intoxicating medicines can be recovered from his possession. That information is correct and reliable. On this notice under section 42 of NDPS Act was prepared and sent to Police Station City Karnal for information through EASI Surender Singh 799/Jind. That from the information, prima facie offence under Section 22-61-85 NDPS Act is found to be made out, on this I/SI prepared a writing and sent to the police Station City Karnal for registration of FIR through Constable Ajay Kumar 799/KNL. After registration the FIR, number be informed. Reports of the case be sent to the senior officials. I/SI is the complainant of the case, so another investigating officer be sent to the



spot for further investigation. I/SI alongwith companion employees alongwith above accused Amit is going in government vehicle to old Bus Stand Karnal. Today:- Nirankari Chowk Railway Chowk, Karnal. SI Balwan Singh SI HSNCB Unit Karnal Dated 29.07.2022 at 9.20 AM. Today at this time, I/ASI Jaipal present at Police Station, that one writing by SI Balwan Singh HSNCB Unit, Karnal through Constable Ajay Kumar 799/KNL was received in the police station. That on the basis of the same offence under Section 22 NDPS Act is found to be made out and FIR No. 671 dated 29.07.2022 has been registered under Section 22 NDPS Act, at Police Station City Karnal. Copies of the FIR are being sent to the Illaqa Magistrate and senior officials and Constable Ajay Kumar 799/KNL is being sent to the spot with copy of file alongwith original FIR to SI Chandeshwar HSNCB Unit Karnal and remaining copies of FIR, as special reports are being sent to the senior officials through the email ID of SHO.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the present case is a case of violation of Section 220 Cr.P.C. as two FIRs are arising out of the same transaction. The petitioner is nominated as an accused only on the basis of disclosure statement of the co-accused that he had called the present petitioner 2-3 days ago and on that account has come to deliver the alleged contraband in the form of Tramadol, Alprazolam and Lorazepam tablets. It is further argued that apart from the present instance, there is no other FIR against the petitioner and has been falsely impleaded in the present case and even otherwise he acted as an employee to Deepak @ Deepu and the confessional statement as suffered by Amit in FIR No.293 at Police Station Ram Nagar,



therein the name of the present petitioner was nominated as an accused. The co-accused namely Amit, Ashish Kumar @ Ashu and Deepak have already been granted the concession of regular bail vide orders dated 23.07.2024, 02.08.2024 and 09.08.2024 (Annexures P-5 to P-7 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 02 years 01 month 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail asserting that huge quantity of tablets got recovered from the present petitioner. He informs the Court that in the present FIR challan stands presented on 21.07.2023; charges stand framed on 21.07.2023. He further submits that the petitioner is involved in another FIR i.e. FIR No.293 dated 24.07.2022 under Sections 22, 61, 85 of NDPS Act, registered at Police Station Ram Nagar, Karnal.

4. Analysis

From the above case it can be culled out that the instant FIR has been wrongly registered as the recovery effected from the present petitioner is only a part of the series of events taken place in earlier FIR No.293 dated 24.07.2022; also the petitioner has already suffered sufficient period in custody i.e. 02 years 01 month 15 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 21.07.2023; charges stand framed on 21.07.2023, there are total 34 prosecution witnesses, out of which only 01 prosecution witness has been examined, 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 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.

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

16.09.2024
Sangeeta

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