



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45076-2024
DECIDED ON: 17.09.2024

SATTU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Gunjan Mehta, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.426, dated 14.08.2022, under Sections 20(c), 27(a) of NDPS Act, registered at Police Station Narnaund, District Hansi.

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

“To, the SHO, P.S. Narnaund, Jai Hind. Today on 14.08.2022, I, ESI Satyapal Singh No.147/Fatehabad, Haryana State Narcotics Control Bureau Unit, Hisar alongwith fellow officials EASI Sanjay Kumar No.364/Hisar, EHC Satish No.173, Ct. Ajay Kumar No.1969/Hisar in Government Vehicle No.HR-05GV-2751 whose driver is Ct. Joginder Singh No.947/Hisar in the search of persons smuggling intoxicant substance and

were present at Hansi Jind Road at Rajpura Canal, then secret informer met and informed that Krishan Kumar S/o Maniram S/o Ramkaran, R/o Dhani Kumharan used to sell intoxicant substance Charas at hotel Shiv Mahima Hotel in the area of Rajpura G.T. Road. If immediate raid is conducted, then he can be apprehended with huge quantity of intoxicant substance Charas. On receiving the information from reliable person, I, ESI aware the fellow officials regarding the information and prepared a raiding party, on which notice under Section 42 of NDPS Act was prepared separately and for information sent through Ct. Ajay Kumar No. 1969/Rohtak to you at Police Station and I alongwith fellow officials in government vehicle reached at Hotel Shiv Mahima, where one young boy was seen standing on the gate of hotel while carrying plastic polythene of black color in his left hand. On seeing the police party, he suddenly started going inside the hotel, then he was apprehended with the help of fellow officials and asked about his whereabouts, who disclosed his name as Krishan Kumar S/o Maniram S/ Ramkaran, R/o Dhani Kumahran, District Hisar. Thereafter, I, ESI served a notice under Section 50 of NDPS Act to accused Krishan Kumar that 'I, ESI/ASI Satyapal Singh No.147/FTB HSNCB Unit, Hisar is appointed as Investigating Officer. I received an information regarding having intoxicant substance Charas in the plastic polythene bag of black color carried by your in your left hand. Plastic polythene bag of black color carried by you in your left hand and your search is to be conducted. Regarding your search, you have legal right that you can conduct your and search of plastic polythene bag of black color carried by you in your left hand from any gazette officer or magistrate, then he can be called on the spot or you can be presented

before Gazetted Officer or Magistrate regarding search of plastic polythene bag of black color. You were informed through notice. After preparing, notice under Section 50 of NDPS Act read over and understand to above said Krishan Kumar in his known Hindi language. After reading and understanding the notice under Section 50 of NDPS Act, he written his reply to notice under Section 50 of NDPS Act that 'I Krishan Kumar S/o Maniram is resident of Dhani Kumahran. In my possession, there is intoxicating substance Charas in plastic polythene of black color carried by me in my left hand. I want to conduct my and search of plastic polythene bag of black color carried by me in my left hand from any Gazetted officer. You will call any Gazetted Officer on the spot. Reply to notice under Section 50 of NDPS Act was prepared and read over and understand to Krishan Kumar in his known Hindi language. Accused Krishan Kumar and witnesses put their signatures on the reply to notice. Thereafter, I, ESI/ASI from my Mob. No.98026-29000 called Sh. Manoj Kumar, Principal, G.S.S.S., Koth Kalan on his Mob. No.9466061569 at 01:30 pm and make aware him about the facts of the case and requested to reach on the spot. Manoj Kumar said that he will reach on the spot within one hour. After waiting, Sh Sh. Manoj Kumar, Principal, G.S.S.S., Koth Kalan reached at the spot at 03:00 pm, to whom before spot inspection, I, ESI offered to conduct search of me and my team, who conducted search of me and my team. During search, no incriminating substance got recovered from me and my team and thereafter, search offer was prepared on which witnesses put their signatures and Sh. Manoj Kumar, Principal, G.S.S.S., Koth Kalan attested the same. Thereafter, Sh. Manoj Kumar, Principal, G.S.S.S., Koth Kalan ordered me to

conduct the search of accused Krishan Kumar and the plastic polythene of black color carried by him in his left hand and for proceeding as per law. Thereafter, I conducted the search of accused Krishan Kumar, then no incriminating substance got recovered from the body of accused Krishan Kumar. Thereafter, search of plastic polythene of black color carried by accused Krishan Kumar in his left hand was conducted, then intoxicant substance Charas got recovered from the same, which was weighed alongwith plastic polythene on electronic weighing machine, then the weight alongwith plastic polythene comes out as 1 Kg 30 gm and without polythene comes out as 1 Kg 26 gm. Recovered intoxicating substance Charas from plastic polythene was put into a cloth and separate palanda was prepared, which was sealed by me with my seal impression SS/3 and palanda of Charas alongwith Sample seal were taken into police possession vide separate Seizure Memo. Seizure memo was signed by accused Krishan Kumar and witnesses respectively. Seal after use and after taking samples, was handed over to EASI Sanjay Kumar No.364/Hisar. Thereafter, Principal seal the Palanda of Charas with his seal impression SP/1 and after use took the seal alongwith him. Principal also attested the Palanda Charas alongwith sample seal and seizure memo and notice and reply to notice. During whole investigation, we tried to join any public witness, but everyone left the spot without disclosing their whereabouts. Therefore, accused Krishan Kumar by keeping 1 Kg 26 gm charas without polythene in his possession, without any license and permit, has committed an offence under Section 20C-61-85 of NDPS Act. On which statement is recorded and sent through EHC Satish Kumar No. 173/HSR to Police Station for

registration of the case. FIR number be intimated after registering the case and another investigating officer be sent on the spot. I, ESI alongwith fellow officials, accused Krishan Kumar alongwith case property is present on the spot. Today Shiv Mahima Hotel Hansi Jind Road in the area of Rajpura. Sd/- Satyapal Singh ESI/ASI, ESI/ASI Satyapal Singh No.147/Fatehabad HNCB Unit Hisar dated 14.08.2022 at 04:00 pm”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the alleged recovery of contraband i.e. 1.030 kg of charas was effected from co-accused Krishan Kumar, who has been granted the concession of regular bail by this Court vide order dated 18.1.2024 passed in CRM-M-48274-2023. He further contends that the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Vinod @ Nodi. It has also the assertion of the counsel for the petitioner that the petitioner is not involved in any other case except FIR No.728, dated 21.09.2022, under Sections 20A, 27-A, 61/85 of NDPS Act, police Station City Hansi, Hisar, wherein he is on bail as well as has been reflected at Annexure P-6.

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 in the disclosure statement of co-accused Vinod @ Nodi, the petitioner has been given specific role of supplying contraband in question and, therefore, he does not deserve the concession of regular bail.

In addition, he further submits that the quantity of contraband is on the much higher side.

4. **Analysis**

Be that as it may, considering the submissions made on behalf of respective counsels for the parties and the custody period i.e. 01 year, 06 months and 03 days for which the petitioner has suffered incarceration, this Court cannot lose sight of the fact that it is only on the disclosure statement of co-accused Vinod @ Nodi, the petitioner has been nominated as an accused and admittedly nothing has been recovered from the present petitioner. It is also to be noticed here that the recovery was made from co-accused Krishan Kumar, who has been granted the concession of regular bail vide Annexure P-2.

In such eventuality, this Court cannot rule out possibility of false implication of the petitioner particularly in the light of the fact that no recovery has been effected from the petitioner despite completion of investigation, wherein challan stands presented to Court on 31.08.2023, charges were framed on 3.10.2023 and out of total 28 prosecution witnesses, only 03 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.

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