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

CRM-M-46388-2024

Date of Decision: September 23, 2024

SIMRANJIT SINGH ALIAS SABHI

....Petitioner(s)

VERSUS**STATE OF PUNJAB**

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Hitesh Chopra, Advocate with
Mr. Amit Kumar, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, 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 grant of regular bail for the petitioner in FIR No.104 dated 08.04.2024, under Sections 21, 29, 61, 85, 27-A of NDPS Act registered at Police Station Civil Lines Batala Tehsil District Gurdaspur (Annexure P-1).

2. The prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

*'Statement of LR/ASI Gurdeep Singh 3098 CIA staff, Batala.
Stated that I am posted in CIA Batala. Today, myself along with ASI
Hem Singh no. 2625, ASI Ramesh Chander 75/832; Const. Suraj, on*

private vehicle/car, in connection with patrolling and search for bad elements was present on T-Point turn Dubbiwal, New Sant Nagar and then, one non- sikh young boy was seen coming, on foot, from the side of Pundar, who, on seeing the police party, abruptly became perplexed, tried to take U-turn and he, while throwing the transparent polythene with weight therein being carried by him in his right hand, was apprehended by myself/ASI with the help of fellow officials and asked him about his name and address and he disclosed his name as Simranjit Singh alias Sabi son of Bhagat Singh, resident of Mayawali gali, Staff road, Murgi Mohalla, Batala, whom I asked as to what contains in transparent polythene with weight therein and he disclosed that envelope contains heroin. Myself/ASI being of local rank, am not competent to investigate the case involving NDPS Act and thus, MHC Gurwant was telephonically asked to send regular NGO on the spot for conducting the further proceedings, upon which you have come to the spot. Apprehended young boy along with transparent polythene envelope with weight therein has been produced before you and proceedings may be done. Statement has been got recorded; heard and it is correct. Sd/- Gurdeep Singh, ASI. Attested Jatinder Pal, ASI, Police Station Civil Lines, Batala, dated 08.04.2024. Police Proceeding: Today, myself ASI was present in police station, then, MHC Gurwant Singh disclosed me that ASI Gurdeep Singh no. 3098/Batala along with fellow officials, during patrolling have nabbed a young boy along with one transparent polythene envelope with weighted therein containing heroin on T-Point turn, Dubbiwal New Sant Nagar and conduct the proceeding on reaching the spot, upon which myself/ASI along with LR/ASI Manjit Singh no. 2883/Batala, PHG Ranjit Singh no. 13325, on private/car, taking investigation kit and printer-laptop along, reached T-point Dubbiwal, New Sant Nagar, where ASI/LR Gurdeep Singh no. 3098/Batala along with fellow officials along with apprehended young boy met and he got recorded his aforesaid statement with me, which, after scribing was read over and he, after reading his statement, appended his signatures in Punjabi, below the statement, which was attested by me. ASI Gurdeep Singh produced the apprehended young boy along with polythene envelope with weight therein before me. Myself/ASI

after asking the aforesaid young boy about his name and address, before checking the transparent polythene envelope with weight therein being carried by him in his right hand, made efforts to join 4/5 public persons to join in the investigation, but, they became inhabitants of same locality, no public person had joined the party, upon which, finding no other option, myself/ASI, in the presence of fellow officials, after explaining my name, rank, number and posting to aforesaid apprehended Simranjit Singh alias Sabi, checked the envelope being carried by him in his right hand, from which heroin was recovered. Myself/ASI asked to aforesaid apprehended Simranjit Singh alias Sabi that I am suspecting about availability of other narcotic substance with you and your search is to be conducted, but, you have a legal right that you may get conducted your search from some nearby Magistrate Sahib or G.O's Sahib and I can call him on the spot or you may be taken to him, upon which aforesaid apprehended Simranjit Singh alias Sabi stated that the heroine which was being possessed by me, the same has already been recovered by you and that I do not possess any other narcotic substance. On this, memo regarding consent for legal right was prepared which was witnessed by the witnesses. Personal search of aforesaid apprehended Simranjit Singh alias Sabi was conducted, as per rules, upon which from left pocket of his wearing trouser (pant) 52 currency notes in the denomination of Rs. 500/- each and 12 currency notes in the denomination of Rs. 200/- each and 16 currency notes in the denomination of Rs. 100/- each, total amount of Rs. 30,000/-, Indian Currency, was recovered and on asking about the same, he disclosed that he disclosed that this amount has been earned by sale of heroin and except this, no other objectionable substance/article was recovered from him. Heroin already recovered from aforesaid apprehended Simranjit Singh alias Sabi was weight with the computerized scale after taking out the same from my investigation kit and it was found to be 50 gm along with envelope. Recovered heroin along with polythene envelope after putting into a plastic box, a separate parcel was prepared and recovered drug money amounting to Rs. 30,000/-/Indian currency after putting into a transparent plastic box, the top of which was tied with thread/cloth, after preparing a parcel, was sealed with my seal bearing impression JS and sample seal was

prepared separately, Seal, after use, was handed over to ASI Hem Singh no. 2625/Batala. Both the parcels were taken into police possession vide separate memos. Since Simranjit Singh alias Sabi son of Bhagat Singh, resident of Mayawali gali, Staff road, Murgi Mohalla, Batala by retaining 50 gm heroin along with polythene envelope in his possession have committed crime under section 21-61-85 NDPS Act, therefore, original statement/memo, for getting the FIR registered, through PHG Ranjit Singh 13325 is being sent to Police Station Civil Lines. After registration of FIR, number of FIR be informed and information be conveyed to Control Room through wireless. Special reports, after issuance, be sent to higher officers. Myself ASI along with fellow officials, am busy investigation on the spot. Sd/- Jatinder Pal Singh, ASI, Police Station Civil Lines, Batala. Dated 08.04.2024. Place: within the area of T-Point Turn Dubbiwal, New Sant Nagar. AT 06:45 PM. Place: Police Station. By this time, aforesaid statement, on receipt in police station, aforesaid FIR qua aforesaid crime, after registration, copy of FIR along with original writing, through coming official, is being sent to ASI, who is busy in investigation on the spot. Information is being conveyed to Control room through wireless. Special reports, after preparation, through ASI Balwinder Singh 2609 are being sent to higher officers.'

3. **Contentions**

On behalf of the petitioner

The Ld. counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He submits that recovery of 50 grams of heroine was effected from the present petitioner along with sum of money to the tune of Rs.30,000/- but the said amount cannot be co-related as drug money. He further submits that there is no other case, pending against the present petitioner and he is a person of clean antecedents, meaning thereby he is not a habitual offender.

On behalf of the State

On the other hand, the Ld. State Counsel appearing on advance notice, accepts notice on behalf of the 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 05 months 10 days.

The Ld. State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail, on ground that the recovery effected from the present petitioner was in tune to Rs.30,000/- and 50 grams of heroin. He further informs the Court that in the present FIR, the challan stands presented on 06.06.2024 and the charges stand framed on 24.07.2024.

4. Analysis

From the above case it can be culled out that investigation is complete and nothing is to be recovered from the present petitioner, the recovery effected from the petitioner is the 50 grams of heroin, which is non-commercial in nature; also the petitioner has already suffered sufficient period in custody i.e. 05 months 10 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, the challan stands presented on 06.06.2024; the charges having been framed on 24.07.2024 and out of total 09 prosecution witnesses, none have been examined yet, which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of 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 as 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.

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

23.09.2024
Sangeeta

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