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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49364 of 2024
Date of decision: 15.10.2024

Mandeep Singh @ Manni

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. K.S. Brar, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court under Section 483 of BNSS has been invoked seeking the concession of regular bail for the petitioner in FIR No.95 dated 04.07.2023 under Section 21 (B) of NDPS Act, 1985 (Section 22(B) of NDPS Act added later on) registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.
2. Prosecution story set up in the present case as per the version in the FIR read as under :-

“Station House Officer, Fateh, Today myself ASI was present at the police station, then an information written by ASI Gurtej Singh No. 576/SMS was received through PHG Manjit Singh 23066 before SI Ranjit Singh No. 532/FZK Station House Officer, Police Station Sadar SMS, the subject matter of which is as mentioned below: Station House Officer, Police Station Sadar Sri Muktsar Sahib. Fateh. Today myself ASI



alongwith S/CT Sukhwinder Singh 1200/SMS, PHG Manjit Singh 23066 on the private vehicle in connection with patrolling as well as checking of suspicious persons, when the police party from the main outside circular road of Village Burha Gujjar was about to enter in the village, then on the circular road from the opposite side, a car make i-20 of white color bearing registration No. DL 4 CND-7466, which was being driven by one Hindu Gentlemen youth was about to come out from the village, then the driver of the about number i-20 car after having been perplexed by seeing the vehicle of police party, made attempt to turn his car at once towards backside, then the car gone switched off, then myself ASI with the assistance of the companion officials after apprehending the said Hindu gentleman youth inquired name address, who disclosed his name as Mandeep Singh alias Manni son of Raghbir Singh alias Shahu President, resident of Kotli Sanghar, District Sri Muktsar Sahib. I have suspicion regarding presence of some intoxicant substance with this youth or in his car, but on account of having Local Rank of myself ASI, I cannot investigate under the NDPS Act. Therefore, some regular NGO may be sent at the spot for taking action. Myself ASI with the assistance of the companion officials having since kept detained the above mentioned Mandeep Singh alias Manni alongwith the car. Written information is being sent to the police station through PHG Manjit Singh 23066. Sd/- Gurtej Singh, ASI, Police Station Sadar SMS dated 03.07.2023. Today in the are of Outside Circular Road, Village Burha Gujjar at 07:40 PM. Regarding the above mentioned information, SI Ranjit Singh No. 532/FZK after recording rapat No. 48 dated 03.07.2023 in the daily diary, by handing over the original information to me, departed myself ASI alongwith PHG Manjit Singh 23066 boarded on the private vehicle alongwith laptop and printer, torch and investigation bank for taking action after going to the spot, on which myself ASI alongwith the companion officials reached at the spot before ASI Gurtej Singh No. 576/SMS, where at the spot ASI Gurtej Singh No. 576/SMS alongwith the companion officials met present alongwith one apprehended Hindu Gentleman youth alongwith car make i-20 of white color bearing registration no. DL- 4CND-7466, who after informing myself ASI about the circumstances produced the above mention Hindu Gentleman Youth alongwith above numbered car before myself ASI, then myself ASI after informing about the circumstances inquired name address of the above mentioned Hindu Gentleman, then he disclosed his name



as Mandeep Singh alias Manni son of Raghbir Singh, resident of Kotli Sanghar, District Sri Muktsar Sahib. Thereafter, myself ASI after introducing myself told the above mentioned accused Mandeep Singh alias Manni told that my name is Nirmal Singh and I have been posted being ASI in Police Department at Police Station Sadar SMS. My belt No. 1105/BTI. I have worn uniform and my name plate has been affixed on my uniform. According to the version of ASI Gurtej Singh No. 576/SMS, I have suspicion regarding presence of some intoxicant substance with you and in the car make i-20 of white color bearing no. DL 4CND-7466 in your possession. I want to conduct search of you as well as above numbered car in your possession. You have got legal right that you can get conducted search of you as well as above numbered car in your possession from any Magistrate or some Gazetted Officer, who can be called at the spot or you can be taken away before the Magistrate or Gazetted Officer, who said that I do not want to get conducted search of me and the car make i-20 of white color bearing registration No. DL-4CND-7466 in my possession from some Magistrate or Gazetted Officer. I have full faith in you and you may conduct search of me and the car make i-20 of white color bearing registration No. DL-4CND-7466 in my possession in the presence of your officials, on which the notice under Section 50 NDPS Act has been served to the above mentioned accused Mandeep Singh alias Manni. On the notice, the above mentioned accused Mandeep Singh alias Manni appended his signature and ASI Gurtej Singh No. 576/SMS and S-CT Sukhwinder Singh No. 1200/SMS appended their respective signatures being witness. Thereafter myself ASI before conducting search made to join public independent witness in the police party, but everybody went away after expressing his/her helplessness. Thereafter on conducting search of above mentioned accused Mandeep Singh alias Manni as well as the car make i-20 of white color bearing registration no. DL-4CND-7466 by myself ASI in the presence of witnesses, heroin was recovered one white colored transparent polythene bag, which myself ASI weighed with the computerized weighing scale, which came out to be 10 grams heroin alongwith transparent polythene bag, on which myself ASI by putting the recovered heroin alongwith transparent plastic bag in the same very white colored plastic envelope, by putting in the cloth bag, prepared a parcel of the same and myself ASI sealed the parcel of heroin weighing 10 grams with my seal bearing inscription NS. Sample



seal was prepared separately. The seal after use was handed over to ASI Gurtej Singh No. 576/SMS. No documents regarding ownership were recovered from the above numbered car. Thereafter myself ASI took the recovered heroin weighing 10 grams duly sealed with seal NS alongwith sample seal and the car make i-20 bearing registration No. DL-4CND-7466 into police possession vide separate memo of recovery. On the memo, ASI Gurtej Singh No. 576/SMS and S/CT Sukhwinder Singh No. 1200/SMS appended their respective signature being witness. Thereafter myself ASI in the presence of the witnesses conducted personal search of above mentioned accused Mandeep Singh alias Manni in accordance with law, then from the pocket of the lower worn by the above mentioned accused Mandeep Singh alias Manni, Indian Currency of Rs. 150/- and an i-phone 13, in which phone no. 95015-71135 runs, stated have been recovered, which were taken into police possession vide memo of personal search. On the memo, the above mentioned accused Mandeep Singh alias Manni appended his signature and ASI Gurtej Singh No. 576/SMS and S/CT Sukhwinder Singh No. 1200/SMS appended their respective signatures being witness. Memo of personal search has been prepared. By keeping 10 grams of heroin in his possession by the above mentioned accused Mandeep Singh alias Manni has committed offence under Section 21(B)/61/85 of NDPS Act, on which after typing ruqa for registration case against the above mentioned accused Mandeep Singh alias Manni, the same is hereby sent to the police station. After registering the case, FIR number may be informed. Special reports may be issued. Information may be given to the Incharge PCR/SMS. Myself ASI alongwith the companion officials is busy in the investigation at the spot.

Contentions

On behalf of the petitioner

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated as no alleged contraband was recovered from the petitioner. He further contends that the petitioner was arrested from his house which was captured in the CCTV cameras of his house and later dismantled by



the police officials which when protested by father of the petitioner, also led to his false implication of case under NDPS Act.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and pointed out that vide order dated 27.08.2024 passed by this Court, the prayer of the petitioner to appear before the trial Court for seeking concession of regular bail was accepted. After addition of offence under Section 21(d) of NDPS Act, second petition for grant of bail on behalf of the petitioner stands rejected by the trial Court. Two prosecution witnesses out of 17 have been examined. He 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 08 days. Opposing the prayer, he submits that the petitioner is a habitual offender being involved in three other criminal cases.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 03 months and 08 days for which the petitioner has suffered incarceration; investigation is complete, challan stands presented on 02.09.2023 and charges have been framed on 07.12.2023. Only two prosecution witnesses out of 17 have been examined, which is suffice for this Court to infer that the conclusion of trial will take 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 ReInhuman 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



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 BNSS, 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

15.10.2024
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No