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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47964 of 2024
Date of decision: 15.10.2024

Shri Kant Tripathi

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Arnav Ghai, Advocate for the petitioner.
Mr. Chetan Sharma, 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.221 dated 09.08.2023 under Section 21(c) of NDPS Act registered at Police Station Udyog Vihar, District Gurugram.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“To, The Station House Officer, Police station Udyog Vihar, Gorugram. Jai Today 1, ASI Sandeep 04/DDR Gurugram alongwith my colleague HSNCB HC Hind, Unit Ajay 1120/PWL in car No.HR-05-GV-5869, the driver of which is Constable Vigesh 3416/FBD present near Sushant Lok, Gurugram. am From D.B.L. Courier company, Plot No.269, Udyog Vihar, Phase-2, Gurugram, Virender Singh Security Investigation Officer informed that during the X-ray, there is suspicion of having intoxicated substance in a box. Upon this Information, notice under Section 42 NDPS Act was prepared and sent to the Police station Udyog Vihar,



Gurugram through Constable Vigesh 3416/FBD for information and the registration of the case and I ASI alongwith my colleagues have reached D.H.L. courier company, Plot No.269, Udyog Vihar, Phase-2, Gurugram. There Sh. Virender Singh, Security Investigation Officer met. I am waiting for the gazetted officer. At 12.30 PM, Constable Vigesh 3416/FBD, after getting the Rapat registered in the roznamcha in Police Station Udyog Vihar came to the site to alongwith gazetted officer Sh.Satish Kumar, ETO 0/0 DETC (ST) Gurugram North. They were told about the facts. The gazetted officer Sh. Satish Kumar, ETO 0/0 DETC (ST) Gurugram North searched me. From my search, no intoxicated substance was found. The memo of my search was prepared, on which the witnesses put their respective signatures and I asked Virender Singh to produce that box, which is suspected to have intoxicated substance. Sh. Virender produced that box before us. On this, Ship from Shashank Srivastav 151, Shriji Nagar, Durgapur, Jaipur 302018 Indian and To Aviv Bekar, EL-AL, street 2 Ramat Gan Gouse-2, 5241332, Ramat Gan, Israel has been written. The same was opened and checked. Then 01 bed sheet of colour yellow, 02 pillow cover of colour yellow and 01 wrist band (rakhi with rudraks in middle) were found. The bed sheet lying in the packet was opened and checked and one polythene was found therein. The polythene was cut and checked and it contained intoxicated substance Amphetamine. The Amphetamine was taken out from the bedsheet and Amphetamine was weighed with the government digital weighing machine. The Amphetamine with plastic bag was found to be 512 grams. The photography of site of incident was made. The said recovered intoxicated substance Amphetamine was put in a plastic box and put the box in a clothed parcel and other articles rakhi, 02 pillow covers and 01 bed sheet were put a polythene bag and prepared a parcel. The gazetted officer Sh. Satish Kumar, ETO, 0/0 DETC (ST) Gurugram North stamped both the parcels with the stamp MS and I stamped the both the parcels with the stamp mark SM and one stamp was put on the sample stamp. Sample stamp was separately prepared. The gazetted officer Sh. Satish Kumar, ETO, O/O DETC (ST) Gurugram, North kept the stamp after its use and I handed over the stamp to HC Ajay 1120/PWL. At the same time, Sh. Virender Singh, Security



Investigation Officer produced an invoice No.01 dated 23.08.08, one WPX, photo copy of adhaar card Shashank Srivastava son of Pardeep Srivastava, resident of 151, Shriji Nagar, Durgapur, Jaipur, Rajasthan 302018. In the invoice Ship from Shashank Srivastav 151, Shriji Nagar, Durgapur, Jaipur 302018 Indian and To Aviv Bekar, EL-AL, street 2 Ramat Gan Gouse-2, 5241332, Ramat Gan, Israel has been written. The above parcel of intoxicated substance Amphetamine, sample seal, parcel of other articles duly stamped and the 04 documents produced by Virender Singh were taken into police possession through a memo of possession. All the parcels, sample seal and memo of possession were verified by the gazetted officer Sh. Satish Kumar, ETO, 0/0 DETC (ST) Gurugram North and the witnesses put their respective signatures. Shashank Srivastava and Aviv Bekar by hiding intoxicated substance Amphetamine 512 grams in a polythene in the bed sheet and sending it to Israel and ordering and by giving to DHL Express Courier Company, have committed an offence under Section 21-C NDPS Act. Thus, the report has been written on the personal laptop and after taking its print out, the same is being sent to the Police station Udyog Vihar through HC Ajay 1120/PWL for the registration of the case. ”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner has produced a copy of the FSL report dated 16.11.2023 in Court to contend that the salt identified is Ketamine and not Amphetamine and therefore the story set up by the prosecution is highly doubtful.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submitted that the identity of the petitioner was determined only on the basis of OTP generated on the mobile phone of one Dev Raj, who in his statement recorded under Section 161 Cr.P.C stated that his mobile was used by Akshay Raj-his son but there is no sufficient material



forthcoming to connect the petitioner with the said mobile phone. Challan in this case was presented on 16.01.2024 and charges were framed on 02.03.2024. No prosecution witness, out of the total 23 prosecution witnesses has been examined yet. The Ld. State counsel filed the custody certificate of the petitioner, which is taken on record. According to the same, the petitioner is behind bars for almost 11 months 07 days.

Analysis

5. Be that as it may, considering the custody period i.e. 11 months and 07 days for which the petitioner has suffered incarceration and taking note of the fact that none of the PWs has been examined yet out of total 23 prosecution witnesses, 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.”

6. 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 as 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.

Decision:

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of 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