

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-M-48156-2024
DATE OF DECISION: 01.10.2024

SINDER KAUR

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S.Sekhon, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The petitioner has filed the present petition under Section 439 Cr.P.C seeking grant of regular bail in case FIR No.112 dated 20.07.2023 under Section 22 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act), registered at Police Station Dhanaula, District Barnala.

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

‘Copy ruqa, Officer in charge PS Dhanaula, today I SI/SHO along with ASI Jasvir Singh 120, sct Jagdeep Singh 569, SLC Veerpal Kaur 946, SLC Amarjeet Kaur 939, Ct Gulkaranpreet Singh 792 and PHG Ajit Singh 47904 with laptop, printer and investigation kit on Govt vehicle numbered PB-65BA- 8124 driven by Ct Tejinderjit Singh 1017 for the purpose of patrolling and checking of suspicious persons and vehicles were present at Bhikhi T-point Dhanaula. At around 04.00PM one special secret informer came and gave an information to I SI/SHO that Lalli Singh s/o Bhola Singh, Jasvir Kaur w/o Dogar Singh, Shinder Kaur w/o



Gobind Singh and Fambo w/o Rohi Singh all r/o backside Ram Bagh Barnala do the business of selling intoxicating tablets foot. Today also they are seen on foot in the area of market grain for Dhanaula selling the intoxicating tablets. If they will be searched in the area of Grain market Dhanaula then they can be apprehended along with heavy quantity of intoxicating tablets. The information is true and reliable. Therefore, the act of Lalli Singh s/o Bhola Singh, Jasvir Kaur w/o Dogar Singh, Shinder Kaur w/o Gobind Singh and Fambo w/o Rohi Singh all r/o backside Ram Bagh Barnala of selling the intoxicating tablets makes out an offence u/s 22/61/85 NDPS Act. Therefore, a ruqa for the registration of a case against Lalli Singh s/o Bhola Singh, Jasvir Kaur w/o Dogar Singh, Shinder Kaur w/o Gobind Singh and Fambo w/o Rohi Singh all r/o backside Ram Bagh Barnala is being sent to PS by hand PHG Ajit Singh 47904 after typing and after taking its print out. After the registration the number of the case shall be informed. Control room Barnala shall be informed. I SI/SHO along with fellow officials am leaving in the search of accused to Grain market Dhanaula. At Bhikhi T-point Dhanaula at 04.25PM SD/ Lakhwinder Singh SI/SHO PS Dhanaula date 20.07.2023'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and no recovery has been effected from the petitioner. He submits that the petitioner has been in custody since 20.07.2023 and the antecedents of the petitioner are clean. He further submits that the co-accused namely Faboo Kaur @ Fambo Kaur has already been granted concession of regular bail vide order dated 26.09.2024 passed in CRM-M-47356-2024 and no fruitful purpose would be served by keeping the petitioner behind the bars as



conclusion of trial would take long time as out of total 9 Prosecution Witnesses, only two PWs have been examined so far.

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 1 year, 2 months and 8 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 01.08.2023 and charges stands framed on 05.11.2023.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 2 months and 8 days, antecedents of the petitioner is clean, similarly situated co-accused has already been granted concession of bail by this Court, 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 01.08.2023 and charges stands framed on 05.11.2023, out of 9 prosecution witnesses, only 2 PWs have been examined so far 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 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.

5. **Decision**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

01.10.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>