



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49353 of 2024
Date of decision: 15.10.2024

Khajan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satbeer Singh Badal, 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.73 dated 21.04.2023 under Section 15(C) of NDPS Act registered at Police Station Sadar Ludhiana, District Ludhiana.
2. Prosecution story set up in the present case as per the version in the FIR read as under :-

“To, Station House Officer, Sadar Ludhiana. Jai Hindi. I Inspector along with ASI Amarjit Singh 10/LDH, ASI Avtar Singh no. 555/LDH, HC/Varinder Singh 3439/LDH, C Amritpal Singh 4042/LDH, C Surinder Pal No. 19943 were patrolling in our private vehicle and had done Nakabandi in search of bad and suspicious elements, suspicious vehicles and we had done Nakabandi from village Laito to Village Jande and we had laid a Naka on the round about of village Jhande and the time would be 7.00 PM, one car color red make swift was seen coming from Ferozpur road and then we saw Amrit Pal Singh tried to stop the car by signaling it, then the driver of the car immediately, put on the brakes and tried to tum back the car and then immediately the police party chased him and since the car driver became perplexed, the car got stopped and then the said constable with the help of other police officials apprehended the driver of the said car bearing no. HR 01 V 9939. After apprehending the said person,



they asked him about his name and address and on being asked the said person disclosed his name as Khajan Singh son of Karnail Singh resident of Sheikh Talwara Tehsil Jagraon, District Ludhiana. Then the Inspector disclosed his Identity to the said person and told him that I am Inspector and my name plate is affixed on my uniform and my name is Inspector Gurpreet Singh, Belt no. 91/FR and at present I am posted as Station House Officer, P.S. Sadar, Ludhiana and I am having suspicion that you and your car bearing no. HR 01 B 9939 is having some intoxicant substance. I want to conduct search of you and the car which is in your possession, but under the NDPS Act, you are having the legal right that you can get your and your car searched from some Magistrate or Gazetted Officer and efforts can be made to call them at the spot. On this the apprehended person told that I want to get my search done from a Gazetted Officer on this, non consent memo of Khajan Singh was being prepared. On the said memo .Khajan Singh signed in Punjabi and the person who was being present at the spot affixed their signature as witness. Then Inspector from his government mobile no. 78370 18614 called on the mobile no. 7837018516 of Shri Vaibhav Sehgal PPS ACP South Ludhiana and disclosed him about the circumstances that happened at the spot and requested him to come at the spot. Then Vaibhav Sehgal PPS ACP South Ludhiana along with his gunman on his government vehicle Bolero bearing no. PB 65 AX 6436 reached at the spot and after reaching there he disclosed his identity to Khazan Singh and told him that I am Vaibhav Sehgal and I have worn my uniform and the name plate is affixed on which and I am a Gazetted Officer of Police Department and at present I am posted as ACP South Ludhiana. I want to conduct search of you and in your possession car bearing no. HR 01 B 9939, but you are having a legal right that you can get your search done from some Magistrate or some other Gazetted Officer and efforts can be made to call them at the spot. On this Khajan Singh told that he is having faith in the ACP, that ACP can get his and his car searched. Then Vaibhav Sehgal PPS ACP South Ludhiana prepared the consent memo of Khajan Singh. On the memo Khajan Singh signed in Punjabi and the person who was being present at the spot affixed their signatures as witness. Then Inspector as per



the directions of ACP tried to stop persons who were passing nearby and tried to make them join as Independent witness, but everyone showed their helplessness. Then on the direction of ACP South Ludhiana, Inspector in the presence of ACP and other police officials checked the car which was in possession of Khajan Singh bearing no. HR 01 V9939 and after checking and from the dicky of the car two plastic heavy bags and which were being opened one by one and after opening the said contained poppy husk was recovered. From the car no document of ownership was recovered. The recovered Poppy husk was being weighed on electronic weighing machine and both the bags were being weighed and the weight of each bag came out to be 30/30 KG of poppy husk. On both the bags mark A and mark B was affixed and on both the bags inspector affixed his seal GS. Separate memo was prepared. After affixing his seal, the same was being handed over to ASI Amarjit Singh 10/LDH. Then on both the bags of Poppy Husk Valbhay Sehgal PPS ACP South Ludhiana affixed his seal VS and attested the same and he even attested the sample parcel by affixing his seal. After affixing his seal, he kept the same with himself. Then Inspector who had recovered two bags weighing 30/30 KG of Poppy Husk having seal GS and VS and sample parcel having seal GS+VS and car bearing no. HR 01 9939 color red, make swift and took the same into police possession vide separate recovery memo. On the memo the witnesses affixed their signatures and the memo was being attested by ACP Accused Khajan Singh son of Karmail Singh for keeping in is possession poppy husk and regarding that he could not produce any permit or licence and in this regard accused Khajan Singh for keeping in his possession 60 KG of poppy husk without any permit has committet an offence under section 15(C)/61/85 NDPS Act. After registering the ruqa against Khajan Singh, the same is being sent to the police station at the hands of C Amiritpal Singh no 4042 for registering the FIR under appropriate section to the police station. After registering the FIR, the number may be Intimated. DCR may be intimated through wireless. Special reports be prepared and sent to police officials. I inspector is present at the spot in investigation. ”

Contentions



3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case wherein false recovery of 60 kg of poppy husk has been planted upon him along with the plastic bag.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submitted that challan in this case was presented on 29.08.2023 and charges were framed on 04.12.2023. Out of total 11 prosecution witnesses, three 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, 05 months 18 days.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 05 months and 18 days for which the petitioner has suffered incarceration and taking note of the fact that only three out of eleven prosecution witnesses 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 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.



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