



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218

CRM-M-50515 of 2024
Date of decision: 21.10.2024

Pardeep Kumar @ Deep

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yashpal Thakur, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court under Section 439 Cr.P.C has been invoked seeking the concession of regular bail for the petitioner in FIR No.267 dated 20.11.2022 under Sections 15,27,27-A,29,61,85 of NDPS Act, registered at P.S City Sunam, District Sangrur.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“Copy of Ruga, Officer Incharge of p.S. City Sunam, Jai Hind, sir today I SI along with ASI Harish Kumar 124 /SGR, HC Jagga Singh 279/SGR, SC Kulbir Singh 1706/SGR, SC Jasbir Singh 2549/SGR, C. Harpal Singh 2094/SGR in Govt. vehicle bearing registration NO. PB 13R 8704 being driven by ASI Bhola Khan 786/SGR having laptop, printer, inverter and investigating kit was present near Grain market Sunam in relation to checking of suspicious persons, vehicles and patrolling, meanwhile time



around 05:15 p.m. a secret informer came present and informed I SI that in a vehicle made Toyota Corolla bearing registration No. DL-4CAE 7327 which is driven by Pardeep Kumar @ Deep son of Dharampal resident of village Badda, P.S. Goraya, District Julandhar, on the left seat of the car Bhim Singh son of Major Singh, resident of New Grain Market Sunam and another person namely Rockey son of unknown are doing the business of selling poppy husk in retail to the Sainsi community in City Sunam after bringing the same from Uttar Pradesh. Today also the said three persons are using the said vehicle are coming from Jakhal side towards Sunam for selling poppy husk. If immediate picket can be conducted in a planned manner then the above said three persons can be apprehended along with heavy quantity of poppy husk. The information is credible and reliable. The act of Pardeep Kumar @ Deep son of Dharampal resident of village Badda; P.S. Goraya, District Julandhar, Bhim Singh son of Major Singh, resident of New Grain Market Sunam and Rockey son of unknown by bringing poppy husk from outside and selling the same fulfills the ingredients of commission of offence under section 15/61/85 of NDPS Act. So sending the ruga to police station City Sunam by Hand C Harpal Singh 2094/SGR for registration of case under said offence against Pardeep Kumar @ Deep son of Dharampal resident of village Badda, P.S. Goraya, District Julandhar, Bhim Singh son of Major Singh, resident of New Grain Market Sunam and Rockey son of unknown. Kindly inform about FIR number after registering the case. Inform Incharge of Control Room via email. I SI along with police party am going towards Jawandha Chowk, Jakhal Road Sunam for conducting barricading.”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner submits that neither the petitioner was arrested at the spot nor any recovery has been effected from him. Co-accused Bhim Singh has already been granted the concession of regular bail vide order dated 02.09.2024 passed by this Court in CRM-M-36770 of 2024.

On behalf of the State



4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that challan in this case was presented on 02.05.2023 and charges were framed on 12.12.2023 and only 01 witness out of 23 has been examined. He has filed the custody certificate of the petitioner, which is taken on record. According to the same, the petitioner is behind bars for almost 01 year, 10 months and 27 days.

Analysis

5. Be that as it may, considering the custody period i.e. 01 year, 10 months and 27 days for which the petitioner has suffered incarceration and taking note of the fact that co-accused has already been granted the concession of bail and only 01 prosecution witness out of total 23 has 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.”

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 439 Cr.P.C. on his



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

21.10.2024
manoj

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