



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50356-2024 (O&M)
DECIDED ON: 18.10.2024

GURTEJ SINGH ALIAS NEETU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.127, dated 28.06.2023, under Sections 22, 29 of NDPS Act and Section 411 IPC, registered at Police Station Lehra, District Sangrur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Copy Rukka - Chief Officer Thana Lehra, Jai Hind. Today I alongwith police party s.B. Amritpal Singh 1743/Sang, Hawaldar Sunil Kumar 1799/Sang and PHG Mahinder Singh 48172 on his private vehicle with laptop, printer and inverter were present at River Bridge Lehra Road Raidharana village Raidharana border. At around

10:15 AM that secret information from informer was received and declared that Jeet Singh alias Gora son of Late Dhira Singh resident near Master Colony Bhikhi Road Budhlada District Mansa aged about 24 years and Gurtej Singh alias Neetu son of Gurcharan Singh alias Gurna resident of Sekhupur Khudal Police Station Breta District Mansa., about 22 years of age, are coming on a motorcycle, without number plate, Hero Deluxe, color red, black, and carrying a large quantity of narcotic pills, will come from Patran side via Raidharana towards Lehra can be captured with Narcotics if proper barricading be done in appropriate time. The statement is true and reliable which can be relied upon. Jeet Singh alias Gora and Gurtej Singh alias Neetu were in their possession of the Narcotics and charged under section 22/61/85 NDPS ACT. Therefore, the case is being registered against the above mentioned persons -Jeet Singh alias Gora son of Late Dhira Singh resident of Master Colony near Bhikhi Road Budhlada District Mansa and Gurtej Singh alias Neetu son of Gurcharan Singh alias Gurna resident of Sheikhupur Khudal Police Station Breta District. Case is typed on Laptop and printed by hand PHG Mahinder Singh 48172 Thana Lehra is sent. File number should be made known by filing a case. . For further investigation file is sent to the Hon'ble Court and awaiting Court Order for further process and a competent investigating officer should be deputed. The control room Sangrur should be informed. The present official along with police party is available on spot for further investigation. Boundary: - Raidharana AT: - 10: 45 AM Correct/- Kamaljit Singh ASI Police Station Lehra Date 28.06.2023. Case to be registered after getting the copy of Rukka and The entry was recorded. Duplicate FIR along with original ruka is sent

through PHG Mahinder Singh 48172 to ASI Harbans Singh 1433/Sang for further investigation. Information is being sent to In-charge control room.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, 1350 intoxicant tablets of Tramadol Hydrochloride and 420 intoxicant tablets of Alprazolam were recovered from the petitioner and his co-accused. He further contends that the provisions of Section 50 of the NDPS Act has not been complied with in this case as the search was not conducted in the presence of a Gazetted Officer or Magistrate. He further contends that co-accused, namely, Gurmeet Singh @ Gurmeet Ram has already been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 22.02.2024 (Annexure P-2), passed in CRM-M-8633-2024.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that 1350 intoxicant tablets of Tramadol Hydrochloride and 420 intoxicant tablets of Alprazolam were recovered from the petitioner and his co-accused Jeet Singh.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 03 months and 18 days for which the petitioner has suffered incarceration; co-accused, namely, Gurmeet Singh @ Gurmeet Ram has already been granted the concession of regular bail by a Coordinate Bench of this Court vide order

dated 22.02.2024 (Annexure P-2), passed in CRM-M-8633-2024 in addition to the fact that investigation is complete, challan stands presented to Court on 23.10.2023, charges have been framed on 15.11.2023 and out of total 21 prosecution witnesses, eight witnesses have been given up and no effective witness has been examined till date, which is suffice for this Court to infer that the conclusion of trial will take a 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 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 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 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 discussions made hereinabove, the petitioner is hereby directed to be released on regular bail 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

18.10.2024
Poonam Negi

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