



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-50419-2024
DATE OF DECISION: 29.10.2024

JASWINDER SINGH ALIAS KAKA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sajan, Advocate for
Dr. S.K. Passi, Advocate the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of Regular bail pending trial in F.I.R. No. 01 dated 01.01.2024 registered under Sections 22(c) of the NDPS Act, 1985 and later on added Section 29 of the NDPS Act, 1985 at Police Station Jaito, District Faridkot, Annexure P-1 (Punjab).

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

‘SHO PS Jaito, Sat Shri Akal, Today myself SI alongwith ASI Gurbachan Singh No. 763/Fdk, C-2 Harjinder Singh 290/Fdk, Senior C. Balwinder Singh 864/Fdk, Lady Senior Sipahi C. Jaspreet Kaur No. 493 alongwith laptop printer on Government vehicle PB-04N-7774 which was driven by Senior C. Gurpreet Singh 911/Fdk were on patrolling and checking of suspected persons were going from Police Station Jaito to Village Seewala and reached at Chandran Flyover Drain and done the barricading and started the checking of the vehicles. Then the time was around 04:00 PM one cherry color car was seen coming from the Village



Chandbhan and myself SI gave the signal to stop then the car driver applied the brake and tried to turn back. Myself SI with the help of co-police personnel nabbed the car driver and asked the name and address then the car driver told his name as Jaswinder Singh @ Kaka S/o Gurinderpal Singh S/o Gurdev Singh R/o Village Dabrikhana Gobindgarh Bajakhana Road, PS Jaito. Then I, SI introduced myself, rank and posting to the car driver of Honda City No. DL-4CAH-8525 and told him that myself SI Charanjeet Singh and is posted as Investigating Officer at C.I.A. Staff Faridkot and told that I suspect you for having some intoxicant material with you or in your car. I want to search your person and your car but you have got the legal right that the search of your person and your car can be conducted in the presence of some Magistrate Sahib or Gazetted Officer of Punjab Police who can be called at the spot without delay or you can be presented before them. On which car driver Jaswinder Singh after thinking for sometime told that he want to get the search of our person and car to be conducted in the presence of Gazetted Officer. On which myself SI prepared separate dissent memos Under Section 50 of the NDPS Act. Notice was signed by ASI Gurbachan Singh 763/Fdk and C-2 Harjinder Singh 290/Faridkot as witnesses. Jaswinder Singh @ Kaka signed the same in English. Then myself SI around 04:23 PM has called the control room Faridkot on No. 75270-17100 from my phone No. 75270- 17274 and told about the situation and requested to send the Gazetted Officer at the spot and then around 04:29 PM, control room intimated that DSP Sukhdeep Singh PPS (S.D.) is coming to Jaito and then the time was around 04:31 PM myself SI from my mobile No. 75270-17274 called to DSP Sahib Mobile No. 90564-22222 and informed about the spot and requested to reach at the spot and then the time was around 04:58 PM DSP Sh. Sukhdeep Singh PPS (S.D.) Jaito alongwith gunman reached at the spot on his Government vehicle. Then myself SI informed about the situation. DSP Sahib asked the name and address from the car driver Jaswinder Singh Honda City No. DL-4CAH-8525 and he told his name Jaswinder Singh @ Kaka S/o Gurinderpal Singh S/o Gurdev



Singh R/o Village Dabrikhana Gobindgarh Bajakhana Road, PS Jaito. Then DSP Sahib introduced himself and told him that myself S. Sukhdeep Singh and is posted as DSP (S.D) at Jaito and is Gazetted Officer of Punjab Police. I suspect you for having some intoxicant material with you or in your car. I want to search your person and your car but you have got the legal right that the search of your person and your car can be conducted apart from me by some other Magistrate Sahib or Gazetted Officer of Punjab Police who can be called at the spot without delay or you can be presented before them. On which car driver Jaswinder Singh after thinking for sometime told that he have full faith on you and you yourself can do the search of our person and our car. On this consent memo under Section 50 NDPS Act were prepared and same was signed by myself SI and ASI Gurbachan Singh 763/Fdk as witnesses. Jaswinder Singh also signed the same in English. Then DSP Sahib gave the directions to the myself SI to search the car and then myself SI in the presence of DSP Sahib and witnesses conducted the search of car No. DL-4CAH-8525 and then from the conductor seat one yellow color printed bag and the same was tied with zip and the same was opened and checked by myself SI and from which gatta box of intoxicant tablets and then all boxes was taken out from the bag and was opened and checked then each box is having 20/20 strips each strip is having 10/10 tablets total 200 tablets mark NRX Tramadol Hydrochloride Tablets 100 mg Tridol 100 was recovered. Myself SI taken out all strips and checked the same and on all strips the Batch No. was rubbed with the black line and from every strip the Batch No. was missing. On each strip MFG NOV 2023 EXP OCT 2025 MRP Rs. 220/- was written. Total 4400 intoxicant tablets were recovered. Recovered intoxicant tablets were put in the same box and the box was marked with No. 1 to 22 and were kept in the same yellow bag and kept in the cloth and the parcel was prepared. Then myself SI sealed the parcel with seal mark CS and the sample seal was prepared separately and the seal after use was handed over to ASI Gurbachan Singh 763/Fdk and DSP Sahib has put his seal mark SS and the sample seal was prepared separately and seal after use was kept with him. Then



myself SI has conducted the search of the car and no documents regarding the ownership of the car was found. Then myself SI has taken the parcel of intoxicant tablets 4400 NRX Tramadol Hydrochloride Tablets 100 mg Tridol 100 and sample seal and Car Honda City No. DL-4CAH-8525 color cherry into the police possession vide Recovery Memo. Memo was signed by ASI Gurbachan Singh 763/Fdk and C-2 Harjinder Singh 290/Faridkot as witnesses and the same was testified by DSP (S.D.) Jaito. Then myself SI has asked the DSP Sahib (S.D.) Jaito regarding the above case and the statement u/s 161 CrPC was recorded. Then myself SI around 06:20 PM send the DSP Sahib from the spot. Accused Jaswinder Singh @ Kaka by keeping 4400 intoxicant tablets in his possession has committed the offence under section 22c/61/85 NDPS Act. So by writing ruqa against Jaswinder Singh @ Kaka S/o Gurinderpal Singh S/o Gurdev Singh R/o Village Dabrikhana Gobindgarh Bajakhana Road, PS Jaito is sent to the police station by hand through Senior/C. Balwinder Singh 864/Fdk. FIR be registered and special reports be prepared and sent to the Higher Officials. PCR Faridkot be intimated. FIR number be informed. I along with co-police personnel was busy in investigation at spot. Sd/- Charanjit Singh.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the son of the present petitioner, named Sukhwinder Singh is running a licenced retail chemist shop under the name and style of 'Dhillon Medical Store' at Village Chandbhan, Tehsil Jaitu, District Faridkot and is holding a valid Retail Licence on Form 20-PB- FDK-155843 and on Form 21-PB-FDK-155844 and the same is valid from dated 10.12.2020 to 09.12.2025. He further submits that according to the FSL Report dated 13.02.2024, the recovered medicines labeled as Tridol-100 was manufactured by Soul Healthcare Pvt. Ltd. and the concerned police personnel has never



investigated from the company as to whom the recovered medicines were sold and that company is neither arrayed as an accused nor has been interrogated. He has further argued that the antecedents of the petitioner are clean 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 25 Prosecution Witnesses, none has 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 9 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected is commercial in nature and the petitioner was apprehended with the alleged contraband 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 22.05.2024 and charges stands framed on 20.07.2024.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 9 months and 23 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 22.05.2024 charges stands framed on 20.07.2024 out



of 25 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, 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 his 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

29.10.2024
anuradha

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