



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50469 of 2024
Date of decision: 21.10.2024

Manavnvi @ Manav @ Manav Navi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Dhillon, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.137 dated 19.07.2023 under Sections 21/22/61/85 of NDPS Act (Section 29 of NDPS Act added later on vide report No.26 dated 21.07.2023) and offence U/s 21 of NDPS Act was deleted) registered at P.S Guruharsahai, District Ferozepur.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ SHO Police station Guruharshai, sir, Today, I SI alongwith ASI Gurdev Singh No.464/FZR, HC Manjit Singh No.1447/FZR, CT. Devpreet No.838, PHG Sarwan Kumar NO.5386 on a govt. vehicle bearing NO. PB-05-AB-0852 going for patrolling and checking of suspected persons from police station Guruharshai, when police



party during patrolling reached near the railway crossing at Guddar Dhandi Road, Guruharshai, on that informer gave information that Harjinder Singh Gabbar son of Gurdeep Singh r/o Chak Kandhe Shah, who is habitual of selling heroin and intoxicant tablets after taken from outside and sell the same, who often came at Guruharshai for seeing heroin and intoxicant tablets, who today also waiting for the customer at T-point village Marre Khurd, Guddar Dhandi Road alongwith heroin and intoxicant tablets if now raid be conducted then he will be arrested alongwith heroin and intoxicant tablets, information is solid and reliable. So, offence under section 21/22/61/85 of NDPS Act is made out against Harjinder Singh Gabbar son of Gurdeep Singh, r/o Chak Kandhe Shah for having in possession of heroin and intoxicant tablets and for selling the same. So ruqa alongwith diary of case against Harjinder Singh Gabbar is sent through PHG Sarwan Kumar No.5386 at police station, let be informed the number of case after registration , special report be prepared. PCR Ferozepur be informed. I, SI alongwith going toward the side disclosed by the informer for conducting raid and for recovery. Laptop and informatory bag and printer is also available with I SI.”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner submits that the alleged contraband was recovered from the co-accused Harjinder Singh @ Gabbar. It is contended that the petitioner was neither accompanying the co-accused nor has any recovery been effected from him. Petitioner’s name has surfaced only from the disclosure statement of the co-accused.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that a recovery of 1000 intoxicating tablets of Tramadol Hydrochloride was effected from the co-accused namely Harjinder Singh. It is not controverted that nothing was recovered from



the possession of the petitioner, who has been nominated only on the basis of disclosure statement of the co-accused. Only two witnesses out of total 09 have been examined as yet. The Ld. State counsel fairly submits that petitioner is behind bars for almost 10 months and 25 days and is not involved in such kind of criminal activity meaning thereby that he is not a habitual offender.

Analysis

5. Be that as it may, the charges have been framed on 02.03.2024 and only 02 witnesses out of total 09 have been examined as yet meaning thereby that the proceedings are moving at a snail pace. The petitioner has been behind bars for almost 10 months and 25 days and is not involved in any such criminal case meaning thereby that he is not a habitual offender, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 483 of BNSS, 2023 on him



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