



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-51974-2024
DATE OF DECISION: 25.10.2024

BALDEV SINGH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.GPS Ghuman, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of BNSS, 2023 for granting Regular Bail in case FIR No. 836, Dtaed 08.12.2023, U/s 15, 29 of NDPS Act, Police Station Thanesar Sadar, District-Kurukshetra, Haryana (Annexure P - 1).

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

‘ To, SHO, Police Station Sadar, Thanesar. Jai Hind. Today, on dated 08.12.2023 at about 3:40 AM, myself/ASI Karambir Singh No. 753/KKR, Anti Narcotic Cell along with SI Jagpal Singh no. 258; Head Const. Nasib Singh No. 340; Const. Sanjeev Kumar No. 249; SPO Surender Kumar No. 317, am present in Anti Narcotic Cell, Kurukshetra and at about 03:50 AM, secret informant met me/ASI in Anti Narcotic Cell, Kurukshetra and conveyed secret information to the effect that Baldev Singh, a resident of Saharan Majra, Ludhiana, used to load his vehicle/truck no. PB-10-ES-8915 from Punjab and carried the



same to Bihar and Jharkhan and on return, he used to bring huge quantity of doda/chura post from Jharkhand etc and used to sell the same in Haryana and Punjab. Today also, Baldev Singh, resident of Saharan Majra, Ludhiana, Punjab is bringing doda/chura post in his vehicle/truck no. PB-10-ES-8915 and in case of checking of the aforesaid vehicle by getting it stopped by laying barricade on NH-44 Karnal-Shahabad Highway in front of Zoo at Pipli, then, huge quantity of doda/chura post can be recovered from the vehicle/truck. Information is reliable. At about 04:00 AM, notice under section 42 NDPS Act after preparation separately, for information, was sent to SO Police Station Sadar Thanesar through SPO Surender Kumar No. 317. After that, myself/ASI after entering the rapat in roznamcha of Anti Narcotic Cell, Kurukshetra, after giving necessary instructions to the secret informant, made him free and in the company of fellow officials taking laptop, printer along, in government vehicle Bollero No. HR-07-GV- 8805, driver of which is Const. Parveen Kumar 486 passing through Pipli Chowk, Pipli on reaching NH-44 Karnal to Shahabad laid barricading in front of Zoo at Pipli at about 04:15 AM. At about 04:30 AM, one vehicle/truck no. PB-10- ES-8915 was seen coming from the side of Karnal and myself/ASI made signal to stop the aforesaid vehicle/truck and after getting the vehicle/truck parked by the side of the road, the person occupying the driver seat was apprehended on 04:35 AM and after disclosing him about my post, name, address and posting asked him about his name and address, who, on asking, disclosed his name and address as Baldev Singh son of Mohan Singh, resident of Saharan Majra, Police Station Malond, District Ludhiana, Punjab. After that, myself/ASI disclosed to aforesaid Baldev Singh that there is suspicion about availability of narcotic substance with you and your search as also search of your vehicle/truck is necessary to be conducted, however, you are having a legal right that you may get conducted your search as also search of your vehicle/truck from some Magistrate or any Gazetted Officer, upon which notice under section 50 NDPS Act was prepared separately. Notice was signed by aforesaid Baldev Singh and witnesses, respectively. Aforesaid



Baldev Singh after thinking for about 02/03 minutes disclosed and expressed his willingness to get his search as also search of his vehicle/truck before some Gazetted Officer. Aforesaid Baldev Singh expressed his willingness, upon which consent notice under section 50 NDPS Act was prepared separately. On consent notice also aforesaid Baldev and witnesses appended their respective signatures and myself/ASI made request to the passerby to join the investigation and to become a witness, but, all expressed their respective inability and left the spot. Aforesaid Baldev Singh kept the notice under section 50 NDPS Act in right side pocket of his black coloured worn lower. After that, myself/ASI from my mobile no. 9992278696 contacted Shri Pardeep Kumar, HPS/DSP SO Police Station Thanesar on his mobile no. 7056700103 at about 04:40 AM and detailing him the facts made request to reach the spot. Shri Pardeep Kumar, HPS/DSP SO, Police Station Thanesar, District Kurukshetra intimated that I am present at my residence and reaching to you within short span. At about 05:05 AM, he reached the spot and after that myself/ASI after detailing entire facts, produced aforesaid Baldev Singh before him. After that Shri Pardeep Kumar, HPS/DSP/SO Police Station Sadar, Thanesar disclosed his name, designation and posting to aforesaid person, namely, Baldev Singh apprehended on the spot and made inquiry from him and aforesaid apprehended person Baldev Singh took out both notices under section 50 NDPS Act from front pocket of his wearing black coloured lower and produced the same before Shri Pardeep Kumar, HPS/DSP/SO, Police Station Sadar, Thanesar, District Kurukshetra. Shri Pardeep Kumar, HPS/DSP/SO, Police Station Sadar, Thanesar made both the notices under section 50 NDPS Act already served upon aforesaid Baldev Singh. In the meantime, SPO Surender Kumar no. 317 after delivering notice under section 42 NDPS Act had reached the spot at about 05:10 AM and he produced a copy of acknowledgement of notice before me/ASI and after that Shri Pardeep Kumar, HPS/DSP/SO, Police Station Sadar, Thanesar asked the aforesaid apprehended person Baldev Singh about his name and address, who, on asking disclosed his name as Baldev



Singh son of Mohan Singh, resident of Saharan Majra, Police Station Malond, District Ludhiana, Punjab. At about 05:30 AM, Shri Pardeep Kumar, HPS/DSP/SO, Police Station Sadar, Thanesar, first of all conducted personal search of mine/ASI and during search nothing except daily routine item could be recovered, upon which memo personal search of Investigating Officer without recovery was prepared. Memo was signed by the witnesses, respectively. After that at about 5:40 AM, on the instruction of Shri Pardeep Kumar, HPS/DSP/SO, Police Station Sadar, Thanesar, myself/ASI conducted search of aforesaid apprehended person Baldev Singh, however, during search no narcotic substance was recovered from the aforesaid Baldev Singh. After that search of vehicle/truck no. PB-10- ES-8915 of aforesaid Baldev Singh was conducted and the vehicle/truck is loaded with iron pipes. On checking the roof of cabin of vehicle/truck no. PB-10-ES-8915 after lifting blue coloured tarpaulin lying in tool of the roof, then, two plastic gunny bags of white colour with weight therein were recovered lying below the tarpaulin. Both plastic gunny bags were opened and checked and on checking, narcotic substance i.e. doda/chura post of brown colour was recovered from both the plastic gunny bags. Aforesaid Baldev Singh disclosed that it is narcotic substance doda/chura post and myself/ASI, on the basis of experience and smell affirmed that it is narcotic substance doda/chura post. After taking out computerized scale available in the government vehicle, both the recovered plastic gunny bags, on being weighed one by one, weight of doda/chura post along with first plastic gunny bag came to be 24 kg and weight of doda/chura post along with second plastic gunny bag came to be 30 kg. Total weight of both recovered plastic gunny bags of white colour containing doda/chura post came to be 54 kg. After preparing separate parcels of both the recovered plastic gunny bags containing doda/chura post, first plastic gunny bag containing doda/chura post was marked as Mark A and second plastic gunny bag containing doda/chura post was marked as Mark B. Both parcels of plastic gunny bags containing doda/chura post were sealed by me/ASI by affixing two seals of my seal bearing



impression KS and seal, after use, was handed over to S.I. Jagpal No. 258 and myself/ASI stopped the persons passing through the spot and requested them to become witnesses but they all while expressing their cogent inability, left the spot without disclosing their names and addresses and after that Shri Pardeep Kumar, HPS/DSP/SO Police Station Thanesar also affixed two seals each of his seal bearing impression PK on both the parcels of plastic gunny bag containing doda/chura post along with sample seals and retained the seal, after use, with himself. Both the parcels of plastic gunny bags containing doda/chura post along with sample seals along with vehicle/truck no. PB-10- ES-8915 loaded with iron pipe along with bility along with R.C. of aforesaid vehicle, revealing registration thereof in the name of Baldev Singh son of Mohan Singh, resident of Saharan Majra, Police Station Malond, District Ludhiana, Punjab, were taken into police possession as a token of proof. Separate parcels of case property i.e. both plastic gunny bags containing doda/chura post were prepared. Parcels of case property i.e. both plastic gunny bags containing doda/chura post were attested by Shri Pardeep Kumar, HPS/DSP SO Police Station Sadar, Thanesar. After that recovery memo of parcels doda/chura post plastic gunny bags along with bill bility along with aforesaid vehicle along with RC was prepared at about 6:20 AM. Recovery memo was got signed from aforesaid accused Baldev Singh and witnesses, respectively. Recovery memo of parcels doda/chura post plastic gunny bags along with bill bility along with aforesaid vehicle along with RC was attested by Shri Pardeep Kumar, HPS/DSP SO Police Station Sadar, Thanesar. After that Shri Pardeep Kumar, HPS/DSP SO Police Station Sadar, Thanesar left the spot at about 6:30 AM. Aforesaid Baldev Singh by retaining 54 kg. doda/chura post contained in plastic gunny bag into his possession has committed crime under section 15-61-85 NDPS Act, upon which rukka, after writing, for getting the FIR registered, through Const. Sanjeev Kumar no. 249 is being sent to police station Sadar, Thanesar. After registration of FIR, number of FIR be informed and special reports of the FIR be sent to the concerned higher officers. Second Investigating officer for



conducting further investigation of the case/FIR be sent on the spot. Myself/ASI along with fellow officials am becoming busy in investigation on the spot. Place: NH-44 (Karnal-Shahabad Highway) near Zoo, Pipli, Kurukshetra. A.N.C. KKR dated 08.12.2023 Time 06:35 AM. Place: Police Station. On receipt of aforesaid rukka through Const. Sanjeev Kumar no. 249 in police station, FIR no. 836 dated 08.12.2023 under section 15-61-85 NDPS Act Police Station Sadar, Thanesar, after registration, computerized copies of special reports were prepared, which, through e-mail are being sent to Superintendent of Police, Kurukshetra; Dy. Superintendent of Police, Kurukshetra and Area Magistrate, Kurukshetra and copy of police file along with original rukka, through coming is being sent to the investigating officer and MHC, ANC KKR was telephonically informed to send second investigating officer on the spot, who disclosed that ASI Sushil Kumar no. 297, ANC KKR being second investigating officer is being sent to the place of occurrence. Entries in record are being made as per rules. This FIR has been registered in the presence of SI Shamsher Singh no. 4/CP, Police Station Sadar, Thanesar. Note Because of non- availability of ID of ASI Sushil Kumar 297 in CCTNS software, ID of SI Shamsher Singh no. 4CP has been used and CCTNS server after getting slower, much time has been consumed in registration of the FIR.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and as per the allegations, the petitioner transported goods from Punjab to Bihar using his truck and on his return, carried large quantities of Doda/Chura post for selling. He has further argued that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender. He asserts that the alleged recovery effected was of 54 kg. of poppy husk in two plastic



bags which is marginally above than the commercial quantity. He further submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as charges in present case are still to be framed.

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 10 months and 8 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in a serious offence and was arrested from the spot, 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 07.05.2024 and charges are yet to be framed.

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. 10 months and 8 days, and the quantity recovered is marginally over and above the commercial quantity, 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 07.05.2024 and charges are yet to be framed, and there are total 14 prosecution witnesses, therefore, conclusion of trial



is likely to take considerable time and 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

25.10.2024
anuradha

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