



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51981-2024
DECIDED ON: 16.12.2024

GURSEWAK SINGH @ SEWAKPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

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. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.91, dated 08.03.2024, under Sections 15 and 29 of the NDPS Act, 1985, registered at Police Station City Barnala, District Barnala.
2. In compliance to the order dated 28.11.2024, short reply dated 15.12.2024 by way of an affidavit of Satvir Singh, Deputy Superintendent of Police, Sub Division Barnala has been filed on behalf of the respondent, which is taken on record. Copy thereof has been furnished to learned counsel for the petitioner.
3. During the course of hearing, the aspersion raised by the petitioner is actually proven to be correct. The fact qua lease of land in favour of the petitioner granted by one Parkash Kaur was not a part of the challan as is evident from para No.6 of the present reply.

4. To have a clearer view, the said reply filed by an officer of the Rank of DSP would read as under:-

“6. That it is respectfully submitted that the factum of execution of lease deed between Parkash Kaur and the petitioner was inadvertently not mention in the Challan U/S 173 Cr.P.C by the then SHO P.S City Barnala INSP Jaswinder Singh, however the original lease deed is annexed with the challan and in the list of witness Parkash Kaur is cited as a witness to prove the fact of execution of above stated lease deed in favor of petitioner. It is further respectfully submitted that on Departmental Side, a Show Cause notice bearing no.1933 dated 21.11.2024 as to why disciplinary action on account of cabove stated lapse in the challan should not be initiated is served by the totary depthent to the concerned Investigating Officer.”

5. It may be a serious lapse as has been stated in the present reply/affidavit by the State and a disciplinary action is initiated vide show cause notice dated 21.11.2024 against the erring police official on account of his failure to make the aforesaid factum as part of the challan under Section 173 Cr.P.C. but at this stage atleast the plea before this Court as raised by the petitioner has been found to be correct which raises doubt on the overall manner of investigation in which it has been conducted.

6. This very fact now would be tested in the trial Court by leading evidence alone which is based on documentary evidence in the form of a lease deed and Prakash Kaur, the alleged executant of the alleged sale deed has been named as one of the witness but on that account it cannot be prima facie concluded to say that the manner in which the recovery effected of the

contraband from the petitioner is found to be correct. It may be an attempt of improvising the prosecution story subsequently inasmuch as the whole prosecution case now seems to have taken a change after filing of the present petition on 16.10.2024 and when this Court called for a status report, on an earlier occasion vide order dated 25.10.2024 such assertion was not made therein except referring to the alleged lease deed by Prakash Kaur executed in favour of petitioner. Even otherwise, this Court can also easily infer now from the fact that a departmental proceeding has been initiated against the then SHO Police Station City Barnala Inspector Jaswinder Singh for his error in furnishing the challan that the alleged lease deed which is an unregistered document may be an afterthought and as such not conclusive evidence to make out a prima facie case at this stage.

7. Learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He submits that the petitioner is a habitual offender as he is involved in another case.

8. In rebuttal, learned counsel for the petitioner submits that the petitioner is on bail in the said case.

9. In the light of above, wherein the petitioner has already incarcerated for a period of 07 months and 17 days, cannot be detained behind the bars any further especially when there is either an inadvertent error or a deliberate attempt to improvise the case subsequently at the end of the prosecution making a circumstance which is full of doubts.

10. 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.”

11. 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.

12. 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.

13. In view of the discussions made hereinabove, this petition is accepted and 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.

14. In the afore-said terms, the present petition is hereby allowed.

15. 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

16.12.2024

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No