



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-52976-2024
DATE OF DECISION: 29.10.2024

RAJWINDER KAUR

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.143 dated 16.07.2023, under Sections 22 and 29 of NDPS Act registered at Police Station Dharamkot, District Moga.

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

‘Incharge Officer, P.S. Dharamkot, Today, 1, Inspector/ SHO alongwith ASI Jagmohan Singh No. 93/Moga, Constable Gurjit Singh No. 1258/Moga, PHG Gurbax Singh No. 11321 were on official vehicle make Scorpio bearing No. PB- 29-L-9604, which was driven by Constable Kuldeep Singh No. 611/Moga and were on patrolling duty in search of suspicious persons in their area of Udham Singh Chowk, Main GT Road, through by-pass and were going to Dharamkot, when the vehicle of police party reached by pass Dharakot on main GT Road about 100 mtrs ahead then at



about 2 PM one hair cut person was seen coming on foot who was wearing blue check shirt and light blue jeans. On seeing police vehicle, he got perplexed and he took out one black colour plastic envelop from right side of his jeans and threw on the road and tried to turn back. On the basis of suspicion, he was apprehended with the help of the accompanying officials and on asking he disclosed his name Raghuvir Singh @ Dhanna son of Hardeep Singh son of Jalal Singh resident of Bhinder Road, Jalalabad (East), District Moga. Public witness was tried to join but nobody agreed for the same. Thereafter, I, Inspector/ SHO disclosed my identity to Raghuvir Singh @ Dhanna that my name is Inspector Gurvinder Singh and I am posted as SHO. I am wearing uniform which is bearing my name plate. I have disclosed you my rank and posting. Thereafter, the black plastic envelop thrown on the road was picked and checked and it contained light orange colour intoxicant tablets which were counted after taking out from the envelop and it was totaling 55 intoxicating tablets. The recovered loose intoxicating tablets were put into same plastic envelop and prepared a parcel by preparing a bundle of cloth. The parcel contained loose tablets was stamped with seal 'GS" and the sample seal was prepared separately. After use the stamp was handed over to Assistant Sub Inspector Jagmohan Singh bearing No. 93/Moga Thereafter, I, Inspector/ SHO asked Raghuvir Singh that I suspect that you have some intoxicant in your custody and keeping intoxicant is an offence, therefore, you are required to be searched and you are legally entitled to get your search through Magistrate or any gazetted officer who can be called on the spot or you can be taken before them. On which RaghuvirSingh @ Dhanna told me, Inspector/SHO that the intoxicating loose tablets which were with him and thrown on the road in the plastic envelop has already been recovered besides them he is not having any intoxicating substance. I have full faith in you, you can conduct my search. On this I, Inspector/SHO, prepared the notice under Section 50(1) of NDPS Act of Raghuvir Singh a Dhanna above mentioned, on which Raghuvir Singh appended his left thumb impression and was signed by ASI-Jagmohan Singh No. 93/Moga and Constable Gurjit



Singh No. 1258/Moga as witness, thereafter, the parcel1) containing loose intoxicating tablets and bearing seal 'GS' alongwith the sample sealed cloth were taken into police possession through recovery memo. Recovery memo was signed by ASI-Jagmohan Singh No. 93/Moga and constableGurjit Singh 1258/Moga as witness. Thereafter, I, Inspector/ SHO told Raghuvir Singh @ Dhanna to take out the pockets of Jean Pant and shirt by his hand wore by him and when he did so no cash/jewellery or mobile phone was recovered from his possession. The personal search memo was separately prepared on which Raghuvir Singh @ Dhanna appended his left thumb impression. The personal search memo was signed by ASI- Jagmohan Singh 93/Moga and constableGurjit. Singh 1258/Moga as witness. Raghuvir Singh (@Dhanna above mentioned could not produce any license or permit for having possession of loose intoxicating tablets. RaghuvirSingh @Dhanna by retaining loose intoxicating tabletsin his possession has committed offence punishable under section 22/61/85 of NDPS Act, therefore, written ruqa is sent through PHG Gurbax Singh No. 11321 to police Station for registration of FIR against Raghuvir Singh @ Dbanha son of Hardeep Singh son of Jalal Singh resident of Bhinder Road, Village Jalalabad (East), District Moga. FIR number be informed after registration. Official and PCR be informed. Special reports be sent. 1, Inspector/SHO alongwith accompanying official is busy in investigation on spot. Sd/-Gurvinder Singh, Inspector/ SHO, P.S. Dharamkot, Dated 16.07.2023.'

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 was apprehended along with 58 loose tablets containing Etizolam salt and the total weight of all the tablets became 7.30 grams of Etizolam. 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 14 Prosecution Witnesses, 2 PWs have 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 1 year, 3 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the contraband recovered is commercial in nature 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 26.10.2023 and charges stands framed on 26.02.2024.

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. 1 year, 3 months and 10 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 26.10.2023 and charges stands framed on 26.02.2024, out of 14 prosecution witnesses, only 2 PWs have 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 her 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>