



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-52979-2024

DATE OF DECISION: 29.10.2024

RIYAZ AHMAD SHER GURI

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Kalsi, 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 483 of BNSS, 2023 for grant of regular bail to the petitioner in case F.I.R no. 61 dated 21.05.2023 under sections 15 & 29 of NDPS Act 1985. Police Station Sujanpur, District Pathankot.

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

‘SHO, Police Station Sujanpur "Jai Hind", Today I. ASI along with ASI Sohan lal 1333/PTK CT Gulshan Kumar 405/PTK PHG Gagan Singh 977 by riding in the Private Vehicle regarding patrolling and search of anti social elements and special checking of vehicles, were reached at check post Madhopur via Sujanpur, where, the checking of the vehicles was getting done, which were coming from the side of J & K. then one truck bearing registration number JK 13 E 8395 ASHOKA LEYLAND was seen coming from the side of Lakhanpur, the same was stopped by giving signal and asked the name and address of the person sitting of the driver seat, who told his name as Riyaz Ahmad Sher Guri son of Mohammad



Ramzan Sher Guri, resident of Midora, Police station Avantipura, Tehsil Avantipura, District Pulwama, Jammu Kashmir, during the checking, 5 weighty plastic bags were recovered from the back side of the driver seat, the same were got opened, upon conducting checking, poppy husk was recovered from the plastic bags, all the five bags were marked as A,B,C,D,E and upon weighing all five bags turn by turn on electronic weighing scale, all came out to be 20/20 Kilograms of poppy husk including the bags, opening of all the five bags were tied with the rope, I ASI has sealed the same with my seal bearing number L.R 1/1 and sample seal was prepared separately, compliance of Form M-29 has been done, seal was handed over to ASI Sohan Lal after using the same and all the five bags of plastic containing poppy husk was taken into police possession vide separate memo as a proof and Truck bearing registration number JK 13E 8395 was taken in to police possession vide separate memo. Riyaz Ahmad Sher Guri son of Mohammad Ramzan Sher Guri, resident of Midora, Police station Avantipura, Tehsil Avantipura, District Pulwama, Jammu Kashmir has committed an offence under section 15-61-85 NDPS Act by keeping 100 kilogram poppy husk in his possession in his truck bearing registration number JK 13E 8395 ASHOKA LEYLAND, the ruqa has been reduced into writing and ruqa is being sent to police station through PHG Gagan Singh 977 for registration of the FIR, case number be informed after registration of the same, special reports be issued and be sent to senior officials, control room be informed through wireless, I, ASI is busy in investigation on the spot along with the colleagues. Sd/- Lekh raj ASI, Police station Sujampur, dated 21.05.2023. today in the area of checkpost Madhopur At 08:15 PM.

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, 100 kg. of poppy husk was recovered from the possession of



the petitioner. 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 9 Prosecution Witnesses, only 1 PW 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 1 year, 5 months and 4 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the alleged contraband recovered from the possession of the petitioner are 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 20.10.2023 and charges stands framed on 08.11.2023.

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, 5 months and 4 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 20.10.2023 and charges stands framed on 08.11.2023 out of 9 prosecution witnesses, only 1 PW 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>