



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-53567-2024
DATE OF DECISION: 05.11.2024

BAJ SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raj Kumar Sharma, Advocate for the petitioner(s).
Mr. Malkiat Singh, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of Bhartiya
Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner
in case FIR No. 195 dated 01.09.2023 registered under section 22 of
NDPS Act, 1985 (Section 29 of NDPS Act added later on), Police Station
Dharamkot, District Moga.

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

*'To, Incharge Officer, P.S. Dharamkot, Today, I,
Inspector/ SHO alongwith ASI Jagmohan Singh No. 93/Moga,
Constable Gurjit Singh No. 1258/Moga, PHG GopalSingh No.
23331 were on official vehicle make Scorpio bearing No. PB-29-L-
9604, which was driven by Constable JaskaranSingh No.
1029/Moga and were on patrolling duty in search of suspicious
persons in the area from Udham Singh Chowk to Village Jalalabad
(East). When the vehicle of police party reached from GT Road to
Link Road near T-Point, Jalalabad (East), it was about 11:30 AM
one hair cut person was seen coming on foot who got perplexed on
seeing the police vehicle and took COPY OF THE out one black
colour plastic envelope from the right pocket of his lower and*



threw on the side of 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 Baj Singh son of Chamkaur Singh son of Jora Singh, resident of Bhinder Road, Village Jalalabad (East), District Moga. Public witness was tried to join but nobody agreed for the same. Thereafter, I, Inspector/SHO disclosed my identity to Baj Singh above that my name is Inspector Gurvinder Singh and I am posted as SHO, P.S.Dharamkot. I am wearing uniform which is bearing my name plate. I have disclosed you my rank and posting. Thereafter, I/Inspector-SHO, told Baj Singh that the black plastic envelop thrown by him after taking from the right side of pocket of his lower is suspected to contain some intoxicant and retaining the same is an offence, therefore, the black plastic envelope is thrown by you is to be checked and you have legal right to get yourself searched from Magistrate or Gazetted Officer, who can be called on the spot or you can be taken before them. On Which Baj Singh told me, Inspector/SHO that he has full confidence in me and you can search the black plastic envelope thrown by me on the road side. I, Inspector/SHO prepared a notice under Section 50 of NDPS Act whwich was signed by Baj Singh in Punjabi. ASI-Jagmohan Singh No. 93/Moga and Constable Gurjit Singh No.1258/Moga, signed the same as witnesses, thereafter, I, Inspector/SHO, picked the black coloured enveloped thrown on the road and on checking light orange colour intoxicant loose tablets were recovered which were counted after taking out from the envelop and it was totaling 50 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, the parcel 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 constable



Gurjit Singh 1258/Moga as witness. Thereafter, I, Inspector/ SHO told BajSingh to take out the pockets of lower 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, which was signed by Baj Singh above in Punjabi. The personal search memo was signed by ASI-Jagmohan Singh 93/Moga and constable Gurjit Singh 1258/Moga as witness. Baj Singh above mentioned could not produce any license or permit for having possession of loose intoxicating tablets. Baj Singh by retaining loose intoxicating tablets in his possession has committed offence punishable under section 22/61/85 of NDPS Act, therefore, written ruqa is sent through PHG Gopal Singh No. 23331 to police Station for registration of FIR against Baj Singh son of Chamkaur Singh son of Jora Singh, resident of Village Jalalabad (East), Moga. FIR number be informed after registration. Official and PCR be informed. Special reports be sent. I, CY OF THE Inspector/SHO alongwith accompanying official is busy in investigation on spot. Sd/-Gurvinder Singh, Inspector/ SHO, P.S. Dharamkot, Dated 01.09.2023.'

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 FIR, 50 loose intoxicating tablets were alleged to have been recovered from the petitioner and as per the FSL report the recovered tablets is having average weight of 121 mg per tablet and the total weight of 50 loose tablets is 605 grams containing salt Etizolam. He submits that the case of the prosecution is based on the circumstantial evidence and the prosecution is not able to connect the petitioner with the recovery. 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, one 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, 2 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that 50 loose tablets of 605 grams containing salt Etizolam has been recovered from the right side of pocket of his lower worn by him and it falls under the commercial quantity but he is not in a position to controvert the submissions made by counsel for the petitioner. He further submits that petitioner is a habitual offender as he is involved in one more FIR. He informs the Court that in the present FIR challan stands presented on 03.11.2023 and charges stands framed on 06.12.2023.

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, 2 months and 1 day, considering that the quantity of recovered contraband is marginal above than the commercial quantity 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 03.11.2023 and charges stands framed on 06.12.2023, out of 14 prosecution witnesses, only one 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.

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 the concession of bail.

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

05.11.2024
anuradha

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