



CRM-M-54063-2024 1

225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54063-2024
Date of decision: 06.11.2024

Shatty Alias SantePetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Kumar Walia, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C seeking the concession of regular bail for the petitioner in FIR No.71 dated 09.05.2023 under Section 22-B of NDPS Act (No.61 of 1985), registered at P.S Nahianwala, District Bathinda.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“Today, I SI alongwith senior constable Sukhjit Singh 1355, constable Karandeep Singh 1699 alongwith Laptop and Printer and investigation kit, on private vehicle being driven by myself SI, in connection with patrolling and checking of suspects, were present within the jurisdiction of Police station. When the police party reached at Jaiton Road, village Dannelsinghwala, Link Road,



then a Mauna (without turban) man was searching the transparent polythene envelope, who on seeing the police party all of sudden became nervous and tried to run towards Dannwala road within limits of village Balahar, who was apprehended with polythene envelope by me SI with the help of police party. Polythene envelope being transparent, the intoxicating tablets were visible. I SI asked about the name and address from the person, who disclosed his name as Shatty son of Om Parkash, resident of Near Phatak Railway, Near Evergreen School, Dhakka Basti, Adampur Mandi, District Hissar, Haryana, at present Street NO.3 12, Gandhi Basti, Kotkapura, District Faridkot. At the spot attempt was made to associate private person as witness, but no private person could be joined in the investigation as all expressed their hardship. Then I SI gave a notice u/s 50 NDPS Act to above said Shatty and disclosed about his own Rank and posting and told him that I SI Chet Singh 629/ Bathinda is posted as investigating officer at P.S. Nahianwala. I have worn SI Rank uniform. Name plate is also displayed. Intoxicating tablets are suspected in your polythene envelope. Due to which, you and your polythene envelope is to be searched under Narcotic Act. It is your legal right that you can get the search of yourself and your polythene envelope conducted from any Magistrate or any gazette officer or you can be accompanied with your polythene envelope before such officer. Upon which, above said Shatty in the presence of witnesses was read over the contents of notice word by word, who after hearing, admitting it as correct appended his signatures in Hindi. Senior constable Pardeep Kumar 297/Bathinda and Senior Constable Sukhjit singh 1355/ Bathinda put their witness. Then above said Shatty by expressing his consent stated that as you have seen the intoxicating have seen white colour substance in my polythene envelope in my possession, I have faith upon you and you may conduct search of mine and my polythene envelope. Upon which separate consent memo was drawn. Memo was signed by above said Shatty in hindi and S.C. Pardeep Kumar 297/ Bathinda and S.C. Sukhjit Singh 1355/ Bathinda put their witness. Then I SI checked the transparent polythene envelope in possession of Shatty abovesaid, and on search, 48 strips, each strip containing 10/10 tablets and total 480 tablets of ALPRASAFE-0.5 (ALPRAZOLAM TABLETS IP-0.5 MG), were found, no batch was mentioned on any strip and 470 loose orange colour intoxicating tablets were recovered. I SI put the recovered intoxicating tablets in a cloth and prepared the parcel



and affix my stamp CS and sample seal was separately prepared. Stamp after use was handed over to S.C. Pardeep Kumar 297/ Bathinda. Parcel containing intoxicating tablets duly affixed with stamp and sample stamp were taken into police custody vide separate memo. Memo was witnessed by witnesses. Then I SI conducted personal search of Shatty above said, from whom no cash or valuable article was recovered. Personal Search Memo was separately prepared which was signed by above said Shatty in Hindu and witnesses put their witness. Above said Shatty on being asked, did not produce any license or permit for keeping in his possession intoxicating tablets and who by keeping in his possession intoxicating tablets without license or permit has committed the offence u/s 22-B of NDPS Act, and therefore, ruqa is being sent to Police Station through Dasti process through constable Karandeep Singh 1699 for registration of criminal case against above said Shatty. Case number be informed after registration of case. Special reports be issued. DCR/ Bathinda be informed. I SI alongwith police party is busy in investigation at the spot. Sd/- Chet Singh SI/ 629/Bathinda P.S. Nihanwala, District Bathinda dated 09.05.2023 Within limits of village Balahar Vinjhu, at 10.00 P.M. ”

Contentions

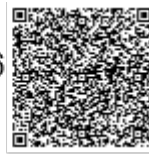
On behalf of the petitioner

3. Ld. counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and false recovery has been planted on the petitioner. He submits that the charges were framed in the instant case on 02.08.2023 and since then out of total seven prosecution witnesses, three have been examined and that the petitioner has suffered sufficient incarceration of almost 01 year, 05 months and 25 days.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that a recovery of total 950 intoxicating tablets i.e 480 tablets of Alprasafe 0.5 mg and 470 loose orange

480 loose orange tablets was effected from the petitioner. Out of total seven prosecution



witnesses, three have been examined. The Ld. State counsel fairly submits that petitioner is behind bars for almost 01 year, 05 months and 25 days and is not involved in such kind of criminal activity meaning thereby that he is not a habitual offender.

Analysis

5. Be that as it may, the challan was presented on 18.07.2023, charges have been framed on 02.08.2023 and only 03 witnesses out of total 07 have been examined. The petitioner has been behind bars for almost 01 year, 05 months and 25 days and is not involved in any other criminal case meaning thereby that he is not a habitual offender, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”

6. 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 as 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 the 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 concession of bail.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C on him furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned. In the afore-said terms, the present petition is hereby allowed.

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**

06.11.2024
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No