



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54390-2024 (O&M)
DECIDED ON: 07.11.2024

KULDEEP SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Monika Tanwar, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 Cr.P.C. for grant of regular bail to the petitioner in FIR No.169 dated 14.07.2024 under Section 21 of the NDPS Act (Sections 22, 29 of the NDPS Act, 1985 added later on) and Section 25 of Arms Act, registered at Police Station Navi Baradari, District Jalandhar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Station House Officer, Police Station Navi Baradari, Commissionerate Jalandhar. Jai Hind. Today I SI along with S.I. Surjit Singh No. 2446, SR/CT Ranjit Singh 1821, SR/CT Sukhdev Singh 3176/CT Sandeep Kumar 1005, CT Jagraj Singh No. 2135, alongwith Laptop and Printer and investigation kit, on Government vehicle PB-08-DG-

9063 Mark Mahindra Bolero, whose driver is CT Lovepreet Singh 2339 were present for patrolling and checking of suspicious persons and drug smugglers near BSF Chowk, Jalandhar. Then one patriot person came to me SI and gave information that in Jalandhar City Jagroop Singh son of Tarlok Singh resident of Village Jama Rai, District Tarn Taran, Bhavjot Singh son of Sarwan Singh R/o Village Doghri, District Jalandhar, Aman R/o Village Johal D Wala, District Tarn Taran and Happy resident of Ladhu Kalsi Kalan District Tarn Taran in connivance with each other are doing business of selling heroin, illegal weapons and ammunition. They mostly call the clients to vacant places and supply the heroin and weapons. Today out of them two persons Jagroop Singh son of Tarlok Singh resident of Village Jamarai, District Tarn Taran and Bhavjot Singh son of Sarwan Singh R/o Village Doghri, District Jalandhar are by keeping heroin and weapons in car No. PB-63-D-6500 Mark Swift colour white are coming towards Railway Station side and Guru Nanakpura Railway crossing to sell the heroin and weapons. If patrolling is done on the vacant place in this area, then both of them can be arrested along with car, heroin and weapons. As the information is correct and reliable, offence u/s 21- 61 - 85 of NDPS Act, 25/54/59 of the Arms Act are made out, as such the writing under the above-mentioned sections is sent through hand of CT Jugraj Singh 2135 to the police station for registration of the case. After registration of the case the number be intimated. Officials and control room be informed. Special report after being issued be sent to Ilaqa Magistrate and officials. Control room be informed. I SI along with companions are going to the area informed by the patriot person. Today in the area of near BSF Chowk Jalandhar at 04:30 PM. SD/ SI Special

Cell, Commissionerate Jalandhar dated 14.07.2024. Today in the police station: - on receipt of the above writing in the police station the above-mentioned FIR under the above-mentioned sections is registered and the original writing along with copy of FIR is sent for further proceedings through the official coming CT Jugraj Singh 2135 to the spot, to the SI. After issuing the special report are sent through hand of CT Sunil Bains 1131 to the Illaga Magistrate and the officials and Control Room are being informed.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been nominated as an accused only on the basis of disclosure statement of co-accused Bikramjit Singh and except the disclosure statement, no incriminating material has been put forth by the prosecution to connect the petitioner with the alleged commissioning of offence. It has been further asserted that co-accused namely Jaswant Kaur @ Khando, Sahil Arora and Parvesh Kumar Goyal have been granted the concession of anticipatory bail by this Court vide orders dated 26.09.2024 (Annexure P-3), 14.10.2024 (Annexure P-4) and 18.10.2024 (Annexure P-5), passed in CRM-M-48315-2024, CRM-M-49589-2024, CRM-M-51164-2024 respectively.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in twelve more cases.

4. Analysis

Be that as it may, considering the custody period i.e. 02 months and 15 days for which the petitioner has suffered incarceration; the petitioner has been nominated as an accused only on the basis of disclosure statement of co-accused Bikramjit Singh and except the disclosure statement, no incriminating material has been put forth by the prosecution to connect the petitioner with the alleged commissioning of offence; co-accused namely Jaswant Kaur @ Khando, Sahil Arora and Parvesh Kumar Goyal have been granted the concession of anticipatory bail by this Court vide orders dated 26.09.2024 (Annexure P-3), 14.10.2024 (Annexure P-4) and 18.10.2024 (Annexure P-5), passed in CRM-M-48315-2024, CRM-M-49589-2024, CRM-M-51164-2024 respectively in addition to the fact that challan is yet to be presented to Court, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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.

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.

5. **DECISION:**

In view of the discussions made hereinabove, 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.

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.

07.11.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*