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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-54872-2024

DATE OF DECISION: 27.11.2024

RAM MURTI

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kanwaljeet Singh, 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 for the second time under Section 483 BNSS for grant of regular bail to the petitioner in case bearing FIR No. 249, dated 27.09.2023 under Section 18, 25, 29, of Narcotic Drugs and psychotropic Substances Act, 1985 (Section 18-B of Narcotic Drugs and psychotropic Substances Act, 1985 added later on), registered at P.S. Sahnewal, District Police Commissionerate Ludhiana.

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

“Statement of Jagdish Rai 1003/LDH, Crime Branch-3, Ludhiana aged around 53 years, M.No.97792-90003. Stated that I am posted as Investigating Officer at Crime Branch-3, Ludhiana. Today I alongwith you and ASI Bhupinder Singh 1233/LDH, ASI Surinder Pal 727/Ldh and Senior Constable Inderjit Singh 1743/LDH alongwith government vehicle Bolero No.PB-10-FV-0520, whose driver is ASI Binder Singh 1473/Ldh, was present at Near Gurudwara Sahib Area P.S.



Sahnewal,

Ludhiana, on the side coming from Delhi to Ludhiana regarding patrolling and checking of bad elements that at around 09.45 pm, secret informer informed me on whatsapp at my Mobile No.97792-90003 that Abhay Gautam s/o Ram Avtar r/o Village Sultanpur P.S. Jalalabad, Distt. Shahjahanpur, UP presently tenant at H.No.18, GaliNo.01, Near Natha da Khuh, Mohalla Mahinder Nagar, Giyaspura, P.S. Daba, Ludhiana, having cut hair from head, who would be around 26 years of age, against whom there are other FIRS registered in different police stations of Punjab regarding the smuggling of opium and Ram Murti s/o Lakhon Kumar r/o Village NawaGaon, P.S. Jalalabad, Distt. Shahjahanpur, UP presently R/o H. No.18, Gali No.01, Near Natha Da Khuh, Mohalla Mahinder Nagar, Gyaspura, P.S. Daba, Ludhiana having cut hair from head, who would be around 53 years of age, who are doing the illegal business of selling opium since a long time in connivance with each other, who has kept a car no.PB-91-L-8651, S Presso Maruti Suzuki white coloured for the supply of opium to their customers and Abhay Gautam and Ram Murti who bring the opium from Rai Barely U.P. and supply the same to their customers in Punjab. That today also Abhay Gautam and Ram Murti above are coming from Khanna side towards Ludhiana side to Ludhiana city, in order to supply the opium to their customers after hiding the opium in their above car no.PB-91-L-8651, S Presso, Maruti Suzuki white coloured. The information given by my secret informer is accurate and reliable. If barricading/naka is laid here and checking is conducted then Abhay Gautam and Ram Murti above can be apprehended with huge quantity of opium alongwith abovesaid car. In this regard, I prepared the report u/s 42 NDPS Act at the spot which will be sent to the officers. Regarding the information given by the secret informer about selling opium by Abhay Gautam and Ram Murti above, I have informed you



verbally. As per the information received from my secret informer, I have got recorded my above statement to you. Statement has been read, is correct. Legal action be taken against the abovesaid Accused. Statement of ASI Jagdish Rai No.1003/LDH attested ASI Jaswinder Singh 1550/LDH Crime Branch-3 Commissionerate Ludhiana dated 27.9.23. Police action: Today I, ASI alongwith ASI Jagdish Rai 1003/LDH, ASI Bhupinder Singh 1233/LDH, ASI Surinder Pal 727/Ldh and Senior Constable Inderjit Singh 1743/LDH'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the contraband involved in the instant FIR is marginally over and above the commercial quantity i.e. 2 kg and 600 grams of Opium whereas no alleged recovery was effected from the possession of the petitioner. He further contends that he has been falsely implicated in the instant FIR on the concocted story of the police authorities without complying with Section 52-A(2) of NDPS Act. He has argued that antecedents of the petitioner are clean as he is not involved in any other FIR, therefore, prays for grant of regular bail.

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. As per the same, the petitioner has undergone custody for a period of 1 year, 1 month and 28 days but is not in a position to controvert the submissions made by counsel for the petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 1 year,



1 month and 28 days for which the petitioner has suffered incarceration; the contraband i.e. 2 kg and 600 grams of Opium, is marginally over and above the commercial quantity in addition to the fact that the investigation is complete, challan stands presented to Court on 29.01.2024, charges have been framed on 08.08.2024 and out of total 13 prosecution witnesses none has been examined so far, 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.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on



16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023.

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.

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.

27.11.2024
anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No