

CRM-M-59055-2023

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-59055-2023
Date of Decision: 09.01.2024

VINOD KUMAR -PETITIONER

Versus

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Pratap Singh Gill, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.222 dated 15.05.2021, under Section 420 of the IPC, and, Section 22-C of the N.D.P.S. Act, registered at P.S. Civil Line, Kaithal, District Kaithal.

ALLEGATIONS IN THE FIR

2. Succinctly stated, the allegations, as levelled in the FIR, are that pursuant to a secret information, a police party, on 15.05.2021, conducted raid in the house of one Vikram Singh, where said Vikram Singh was found present along with the present petitioner, and, 207 tablets of Addnok-N^{NRX} Buprenorphine 2 mg and Naloxone 0.5 mg total weight 22.77 grams, which falls in “commercial quantity”, 22 bottles of Pheniramine Maleate Inj. I.P.N-Vil injection (Veterinary use only for intramuscular injection only) 100 mls, 53 bottles of Pheniramine Maleate Inj. I.P.N. Vil

CRM-M-59055-2023

2

Injection (Veterinary use only for intramuscular injection), 22 bottles of Pheniramine Maleate Inj. I.P.N-Vil injection, were recovered.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) Petitioner has been falsely entangled in the instant FIR, as, despite the alleged raid being conducted in broad daylight and that too in a residential area, no independent witness was joined by the police party while effecting the alleged recovery;

(ii) Co-accused Vikram Singh, from whose house, the alleged contraband was recovered, has been enlarged on regular bail by a Co-ordinate Bench of this Court, vide order dated 06.11.2023, drawn in CRM-M-50682-2022;

(iii) Since case of the petitioner is on better footing than co-accused Vikram Singh, who has already been granted concession of regular bail, the petitioner also deserves being treated at par;

(iv) Petitioner has suffered incarceration of more than 2½ years;

(v) By placing reliance upon Annexures P-4 to P-12, which encompasses the zimni orders of trial court, he submits that despite issuance of multipleailable and non-ailable warrants, trial is moving at a snail's pace, as out of total 20 prosecution witnesses, only 6 prosecution witnesses have been examined so far, therefore, trial is not likely to conclude anytime soon and keeping the petitioner behinds the bars would serve no purpose;

CRM-M-59055-2023

3

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. *Per contra*, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, District Prison, Kaithal. He has vociferously opposed the grant of regular bail to the petitioner, on the ground, that the recovery contraband falls within the category of “commercial quantity”, and, his earlier petition for regular bail, i.e. CRM-M-12117-2022, has been dismissed by a Co-ordinate Bench of this Court, vide order dated 18.05.2022. However, neither he has contested the factum qua the petitioner being behind the bars for more than 2½ years, nor has contested the factum qua examination of only 6 prosecution witnesses out of total 20 prosecution witnesses, nor has contested the factum qua grant of regular bail to the co-accused of the petitioner.

ANALYSIS

5. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”***, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

6. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal

CRM-M-59055-2023

4

jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

7. In “*Nikesh Tarachand Shah V. Union of India*”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left

the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to

secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

8. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

9. Also, Hon'ble Supreme Court in ***“Satender Kumar Antil versus Central Bureau of Investigation and another”, 2022(10) SCC 51***, has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments

resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

10. The Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”***, ***Special Leave to Appeal (Criminal) No.4169 of 2023***, has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

CRM-M-59055-2023

8

11. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

12. The reason for forming the above inference emanates from the factum that:- (i) the custody certificate (supra) reveals that the petitioner has undergone actual custody of 02 years 07 months and 23 days as on today; (ii) co-accused Vikram Singh has already been granted the concession of regular bail; (iii) there is no likelihood of the trial concluding anytime soon, as the trial is moving at snail's pace, as is evident from the zimni orders (Annexures P-4 to P-12), which reveal that despite issuance of bailable and non-bailable warrants to the prosecution witnesses, only 6 prosecution witnesses have been examined out of total 20 prosecution witnesses.

FINAL ORDER

13. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

14. It is clarified that anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

09.01.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No