



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55194-2024
DECIDED ON: 16.12.2024

GURVINDER SINGH @ GAGGU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Sandhu, Advocate and
Mr. Kaushal Chahal, 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 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.118, dated 11.08.2023, under Section 22(c) of NDPS Act, registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.
2. Prosecution story setup in the present case as per the version in the FIR as under:-
- “SHO, P.S. Sadar Sri Muktsar Sahib, "Fateh" today myself ASI was present in the police station then SI Sukhwinder Singh No.55/SMS has received written information from ASI Harjinder Singh 556/SMS Incharge Police Chowki Chak Duhowala by hand PHG Sunder Singh 23635 in the police station, the contents of which is as under:- " SHO, P.S.Sadar Sri Muktsar Sahib "Fateh"*

today myself ASI alongwith Ct Gursewak Singh No. 1385/SMS and PHG Sunder Singh 23635 in the private vehicle in regard to patrolling and checking with regard to suspicion persons were coming through passage on the bank of canal which falls in village IKRAM SINGH 023.09.19 03:36 RUE SCANNED COPY OF THE dRupana side, the vehicle was driven by Ct.Gursewak Singh No. 1385/SMS, when the police party reached near the Hand Pump installed near the Hut of Dera Baba Sunder Das, then two Hindu gentlemen seen sitting nearby, on which myself ASI on the basis of suspicion stopped the vehicle seen both the youngsters from back side, these both were searching something from black colour plastic bag. After heard the noise of the foot of the police party they saw backside and hide the black colour plastic bag into their hands. On which myself ASI got suspicious. Myself ASI has asked their name and address one by one, the youngster who hide the plastic bag has disclosed his name as Gurvinder Singh alias Gaggi son of Swaran Singh son of Bagga Singh resident of Rupana, and other has disclosed his name as Gurpiar Singh alias Monu son of Swaran Singh son of Bagga Singh resident of village Dhigana. I have asked them with regard to carrying black colour plastic bag then they could not give satisfactory reply. Myself ASI has suspicion that some intoxicant material is available in their black colour plastic bag. But due to local rank I am not competent to conduct the proceedings under NDPS Act. Some Regular NGO be send at the spot. In this regard after written information the same is being sent to the police station by hand through PHG Sunder Singh 23635. Myself ASI alongwith companion employees have keep apprehending above both the persons”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, 60 tablets of Etizolam was recovered from the possession of the petitioner. He further contends that the petitioner has been falsely implicated in the present case as nothing has been recovered from the conscious possession of the petitioner. It has been further contended that mandatory provisions of NDPS Act i.e. Sections 42, 50 and 52 have not been complied with by the investigating officer. It has been further asserted that now nothing is to be recovered from the present petitioner, therefore, keeping the petitioner behind the bars would not serve any purpose.

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 recovered contraband i.e. 60 tablets with total weight of 7.8 grams falls under the commercial quantity. He further submits that the petitioner is a habitual offender as he is involved in another case.

Countering the above-said argument i.e. the petitioner is involved in another case, learned counsel for the petitioner submits that the petitioner is on bail in that very case.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 04 months and 01 day for which the petitioner has suffered incarceration; nothing has been recovered from the conscious possession of the petitioner; the mandatory provisions of NDPS Act i.e. Sections 42, 50 and 52 have not

been complied with by the investigating officer in addition to the fact that investigation is complete, challan stands presented to Court on 30.11.2023, charges have been framed on 05.01.2024 and out of total 17 prosecution witnesses only 03 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take 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.

16.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No