



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

239

CRM-M-56467-2024

DATE OF DECISION: 20.12.2024

PUSHPA DEVI

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Sheoran, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.384 dated 07.11.2023, under Sections 20 (b) (ii) (c) and Section 29 of NDPS Act registered at Police Station Sector-53, Gurugram, District Gurugram.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘To, The SHO, Police Station Sector-53, District Gurugram. Jai Hind. Sir, Today on 07.11.2023, I ASI Jitender 832/GGM, Constable Gautam 4308/GGM on getting the information from the secret informer, am present at Police Station Saraswati Kunj, Sector-53, Gurugram Crime Branch then secret informer gave the information that one person whose name is Ramakant son of Jamun Thakur, resident of Fatehabad, Police Station Peru, village District Muzaffarpur, Bihar, who is selling the intoxicating substance in Saraswati Kunj, Sector-53 and today he is standing along with vehicle No.BR06BR3940 colour white and is. looking for an opportunity for selling intoxicating substance Charas. If



immediately raid be conducted then he can be apprehended along with intoxicating substance. On finding the information. as trustworthy, after preparing report under Section 42 of NDPS Act, it has been sent by me to police station through Constable Gautam 4308/GGM for informing senior officers and it was informed through phone to Sh. Dinesh Sharma ETO and SHO Police Station Sector-53 and prepared a raiding party after intimating the fellow official regarding information and stopped the passerbys and asked for joining the raid but every one showing their helplessness went on their way. Due to odd hours, notice has not been given to anyone. I ASI along with fellow officials and secret informer reached at Saraswati Kunj, Sector-53 where the informer signaled towards vehicle No. BR06BR3940 standing on the distance of 30/40 steps that the person namely Ramakant is sitting in this car who is carrying intoxicating substance Charas. Upon which, I freed the informer after giving appropriate instructions. And I checked the above said car standing near the fellow companion then one person sitting on the rear seat of that car, who was apprehended and his name/address asked then he disclosed his name Ramakant son of Jamun Thakur, resident of Fatehabad, Police Station Peru, District Muzaffarpur, Bihar aged 45 years, to whom I have given notice u/s 50 of NDPS Act that it has been informed through notice to you above said Ramakant that there is suspicion of intoxicating substance in your car. Your search is required. You want to yourself get searched from gazetted officer or Magistrate or through me, it is your own legal right. As per your wish, gazetted officer/Magistrate can be called on the spot. After understanding the above said notice by Ramakant in your language, he has shown the consent in his reply to notice for calling the gazetted officer on the spot for searching him and his car through gazetted officer. Ramakant has appended his signatures on the reply to notice. Thereafter, I after informing the complete situation to Inspector Rajender Singh Sector-53, Gurugram through my phone, requested the concerned gazetted officer to reach on the spot. After sometime, Sh. Dinesh Sharma



ETO Gurugram came present on the spot. I narrated the entire situation to the ETO and has given notice u/s 42 of NDPS Act. The ETO has seen the notice and ETO introduced himself to the above said apprehended person and after understanding the given notice by Ramakant in your language, he has shown the consent for conducting his search and that of his car through ETO. Thereafter, ETO conducted Dinesh Sharma apprehended Ramakant. Nothing search has of been recovered from his body. The white plastic bag lying behind the driver seat has been checked then intoxicating substance charas has been found in it who has been smelled by the ETO and me as per our experience then it seems to be Charas. After arranging the electronic scale, recovered charas intoxicating substance along with polythene bag has been weighed then the total weight comes along with license or to 193 grams charas polythene. Regarding permit was said Ramakant for which asked from above keeping recover intoxicating substance then Ramakant could not produce any license or permit. After putting the recovered intoxicating substance Charas along with polythene bag in cloth parcel, I ASI Jitender attested with seal JK and ETO affixed his seal MK and ETO kept the seal with himself after using it and I handed over my seal after its use to cm. Gautam No.4308/GGM. Thereafter, the ETO verified the parcel. The apprehended intoxicating substance Charas has been taken into police custody through Gautam inventory receipt. Constable No.4308/GGM has appended his signatures on inventory receipt. Thereafter, ETO has verified the inventory receipt. Ramakant has committed offence u/s 20 (b) (ii) (b) NDPS Act for keeping 193 grams charas intoxicating substance in his possession. Upon which, after preparing the ruga, copy is being sent station through Constable No.4308/GGM for registration to police Gau of ca After registering the case, FIR number be informed on the spot. investigating officer in I ASI the case. is At last, other investigating officer be sent in the case for further investigation. I ASI is busy in the investigation on the spot. Place: Saraswati Kunj, Sec-53, GGM. Sd/- Jitender ASI PS Sector-53, District Gurugram dated 07.11.2023 at 7:50 PM. Place: On receipt of above said ruga on



the spot to police station, copy of FIR No.384 dated 07.11.2023, u/s 20(b)(ii) (B) of NDPS Act, PS Sec-53, GGM, has been prepared on computer accordingly. Copies of FIR have been prepared from computer and after preparing the special report of FIR, it is being sent to senior officers through. email. The Manager has been informed regarding the FIR. Police file, original writing and copy of first information report along with me/ASI, left for the place of occurrence through Constable Gautam 4308/GGM for further investigation and rider has been informed for reaching on the spot. Note: This FIR has been mentioned in the presence of ASI Dharmender 628/GGM. 628/GGM 28.438494. Longitude 1/0 ASI 77.096169.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as she was even not named in the instant FIR. During the course of the investigation, one person namely Ramakant was arrested and on the basis of his disclosure statement the petitioner was nominated in the present FIR and the alleged recovery of 193 grams of Charas was found in possession of the co-accused and nothing has been recovered from the conscious possession of the present petitioner. He has further argued that the antecedents of the petitioner are clean, meaning thereby, she is not a habitual offender.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year and 1 month.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year and 1 month, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, nothing has been recovered from the petitioner and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 16.03.2024 charges stands framed on 18.07.2024 out of total 33 witnesses cited by the prosecution, 2 PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 Nimesh 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

20.12.2024
anuradha

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