



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57087-2024
DECIDED ON: 21.11.2024

GORA SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mukul Gupta, 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 second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.73, dated 22.07.2017, under Sections 21 & 22 of NDPS Act, registered at Police Station Gidderbaha, District Muktsar Sahib.

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

“Station House Officer, Police Station Gidderbaha, Fateh, Today myself ASI along with HC Harcharan Singh 734, C Jaswinder Singh 758, and PHG Darshan Singh 11971 boarding private Car to which I was driving myself, in connection of patrolling was going from Lambi Road via Gidderbaha then when the Police party reached near Railway Crossing Lambi Road then from the street of Lakshmi Nagar one Hindu youngsters come on

Motorcycle discover black coloured bearing number RJ-13-SK-6685 came towards Railway crossing, who upon seeing the police party momentarily got nervous and tried to turn the Motorcycle back but due to the bad passage he failed to turn the motorcycle in a hurry then myself ASI on the basis of suspicion sped up the Car stopped him and nabbed him with the help of fellow employees, whereby on the left handle of the Motorcycle one plastic bag was lying hanging, in which something was filled and upon asking name and address by me he disclosed his name as Gora Singh son of Nachhattar Singh Caste Jatt Sikh R/o Lalbai Police Station Lambi and now residing as Tenant Back side Truck Union Gidderbaha, to whom I said that I have suspicion that you are having some intoxicated substance, I want to search you and the plastic bag in your possession, you have legal right that if you want to get search of yours and your vehicle be conducted in presence of some Magistrate or Gazetted Officer, who said that I have trust upon you only, you may conduct search of me and my plastic bag, whereby effort was made to join public witness but could not found, then myself ASI conducted search of plastic bag hanging on the handle of the Motorcycle of Gora Singh as per Rules from which 8 intoxicated pet bottles 100/100 ML sealed make WIN-CEREX each pet bottle contain batch number WTS-1062, MFG Date Jun-2017, Exp. Date May-2019 has been written as well as intoxicated tablets make KALMFRESH, Alprazolam 0.5 mg 75 strips containing 10/10 Tablets upon each strip Batch number To22A 15, MFG Date Jan-15 and Exp. Dec 2016 is entered and are of MASS BIO Care PVT LTD. Company were recovered. That myself ASI took out one intoxicated pet bottle make WIN-CEREX each pet bottle contain batch number WTS-

1062, MFG Date Jun-2017, Exp. Date May-2019 as sample out of the recovered and parcel of the same was prepared and parcel of rest of 7 pet bottles 100/100 ML sealed intoxicated pet bottles was prepared separately and out of recovered 75 strips of intoxicated tablets, one strip containing 10 Tablets make KALMFRESH, Alprazolam 0.5 mg Batch number To22A 15, MFG Date Jan-15 and Exp. Dec 2016 was taken separately as sample, parcel of the same was prepared and parcel of rest of 74 strips 10X10 intoxicated tablets make KALMFRESH, Alprazolam 0.5 mg 740 tablets was prepared separately. All four parcels were sealed with my seal K.C. specimen of seal and Form M-29 were prepared separately, Form M-29 was filed at the spot, seal after use was handed over to HC Harcharan Singh 734. All four parcels duly sealed with seal along with specimen of seal, Farm 29-M and Motorcycle Discover Number RJ-13-SK-6685 black coloured was taken into police custody, upon the memos witnesses appended their respective signatures. Gora Singh above named upon demanding failed to produce any permit or License, who by keeping in his possession 8 intoxicated pet bottles 100/100 ML and 750 intoxicated tablets above mentioned in his possession has committed an offence under section 21,22-61-85 of NDPS Act. Whereby for registration of case Gora Singh S/o Nachhattar Singh R/o Lalbai Police Station Lambi now backside Truck Union Gidderbaha slip was sent by hand through PHG Darshan Singh to Police Station, After registration of the case number of the case may be informed. Special Reports may be issued PCR/SMS may be informed, I along with fellow employees am busying in investigation. Sd/- Kishore Chand ASI PS GDB Dated 22.07.17 near Railway Crossing Lanbi Road GDB AT 09:25 PM. ”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the quantity of recovered contraband i.e. 08 vials of WIN-CEREC of 100 ml each and 75 strips of Alprazolam make Kalmfresh 0.5 mg, each containing 10 tablets (total 750 tablets) is marginally over and above the commercial quantity. He further contends that the petitioner is in custody since 23.07.2017, challan stands presented to Court on 04.11.2019 and charges have been framed on 16.01.2020.

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 one more case.

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 years, 02 months and 01 day for which the petitioner has suffered incarceration; the quantity of recovered contraband is marginally over and above the commercial quantity in addition to the fact that investigation is complete, challan stands presented to Court on 04.11.2019, charges have been framed on 16.01.2020 and out of total 13 prosecution witnesses only 05 witnesses have 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.

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.

21.11.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*