

2024:PHHC:151727



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56828-2024
DECIDED ON: 20.11.2024

USHA DEVI ALIAS ASHA DEVI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satnam Thakur, Advocate and
Mr. Abhinav Mahant and Mr. Vikas Rana, Advocates
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 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.182 dated 17.09.2022, under Sections 21 of NDPS Act, 1985 registered at Police Station Mahilpur, District Hoshiarpur.

2. Facts

Facts as narrated in the FIR reads as under:-

“To the station house officer police station Mahilpur , today I SI / SHO along with ASI Ramal number 619 Hoshiarpur, Ankush Kumar sepoy number 1725 Hoshiarpur, lady / head constable Parminder Kaur number 928 Hoshiarpur, PHG Paramjeet Kaur number, PHG Jaswinder Singh 26920 were on government vehicle whose driver name is ASI Kulwinder

Singh number 681/ Hoshiarpur were on regular checking in regard to doubtful persons and were at Harbans gate mahilpur. And one secret informer give us information that Jasbir Kaur alias faujan wife of late Kishan Singh resident of langeri road mahilpur and her family who are involved in selling of huge quantity of heroine which is illegal business and they have many cases registered against them. Jasveer Kaur faujan is presently confined in jail and her family in which her daughter in law and her daughters and one son and two servants and other family members are doing business at very high level at her instance and at their own home and selling heroine. Today her family members have hidden the money which is earned from selling drugs and one plastic packet of heroine and both are kept at the house of jasveer Kaur - alias faujan at langheri road mahilpur at the verrandah in the soil and heroine is hidden at the outside wall of the outside kitchen. Today Usha Devi wife of late tilak raj resident of House of jasveer Kaur langeri road mahilpur, Usha Devi alias Asha Devi wife of Paramjit resident of house jasveer Kaur faujan langeri road mahilpur, Renu daughter of Late Kishan Singh wife of not known resident of police station bhogpur at present resident of house of jasveer Kaur faujan road mahilpur, Maninder wife of Raja daughter of late Kishan Singh resident of wadiyan district SBS Nagar at present resident of house of jasveer Kaur faujan, Langeri road mahilpur, Veenu wife of not known daughter of late Kishan Singh resident of Chandu chak police station bhogpur at present resident of jasveer Kaur faujan Langeri road Mahilpur Rimpay wife of honey daughter of late Kishan Singh resident of Chandigarh at present resident of jasveer faujan, Langer road mahilpur, Ravinder Kaur wife of rummy daughter of late Kishan Singh residence of house of jasveer Kaur, bhajan Singh alias Rummy son of late Kishan Singh resident of house of jasveer Kaur Langeri road mahilpur are present at the house and are selling heroine by putting them in packets and if ray disc connected at present moment then heavy quantity of heroine can be recovered and also the money which is earned from the said purpose and along with the persons can be arrested. The present information is valid and can be believed and prima facie offence under section 21/61/85 NDPS Act is committed and for this has been written and will send to the police station by hand of head constable Ankush Kumar number 17254 to the police station and the case we registered and the case number may kindly be informed and special reports make kindly be prepared. The control room make kindly be informed and today I SI / SHO along with the colleagues on government vehicle whose driver is ASI Kulwinder Singh number 681 Hoshiarpur and along with private vehicles

are going to langeri road mahllpur signed Jaswant Singh SI station house officer police station mahilpur dated 17th September 2022 in the jurisdiction of urban gate mahllpur at 5:10 p.m.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner was working as a servant in the house from where 1.5 kg heroin was recovered alongwith an amount of Rs.5 lacs. He has drawn attention of this Court to an order dated 02.04.2024 (Annexure P-5) passed by a co-ordinate Bench of this Court in CRM-M-25040-2023, vide which co-accused namely Manjit Kaur has already been granted the concession of regular bail and claims parity.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the contraband recovered in the present case is commercial in nature, and therefore, the rigorous of Section 37 of NDPS Act would be attracted.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 2 years, 2 months and is not involved in any other case, as is evident from the perusal of the custody certificate and co-accused has already been granted the concession of regular bail, investigation is complete, challan stands presented on 14.03.2023, wherein conclusion of trial shall take considerable time as out of 12 prosecution witnesses, only 2 has been examined after framing of charges on 10.05.2023 so far, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court

passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R.*

(Criminal) 131. 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 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.

20.11.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>