

2024:PHHC:154457



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57287-2024
DECIDED ON: 22.11.2024

AMARDEEP SINGH @ KAKA

.....PETITIONER

VERSUS

STATE OF UT CHANDIGARH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kulwinder Bhargav, Advocate
for the petitioner.

Mr. Rajiv Anand, PP, UT, Chandigarh alongwith
Mr. Vandit Jain, Advocate for UT, Chandigarh.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 02, dated 01.03.2024, under Sections 21, 22 & 29 of NDPS Act, 1985 registered at Police Station ANTF Sector 11 Chandigarh.

2. Facts

Facts as narrated in the FIR reads as under:-

“Brief Facts: - Sit, contents of the present case is as follows that on 01.03.2024, I ASI Jitender Kumar 2901/cp along with HC Vikas Ali 1835/cp in vehicle no. CH01GA6827 driven by Sr. Ct. Narender 1889/CP were present in sec-39, Chandigarh for patrolling and prevention of crime. And after parking the government vehicle near park sec 39 D, the police party including me ASI was going on foot to

patrol towards main road sec-39/56. It was around 5:00 AM when the police party was 8-10 steps behind I Point Sec-39 C/D, when a Hindu gentleman walking on foot holding a heavy black colour bag in his right hand reached at T point Sec-39 C/D which was coming from Sec-39 D from Slip Road from the side of Petrol Pump. On seeing the police party coming towards him, he immediately stopped and turned back and started walking at a fast speed, to whom I ASI asked to stop, then I ASI including the police party reached near that person and I ASI asked him as to what is in your bag, to which in a nervous and low voice he told that there are fruits in it. Seeing the expressions of the person, the heavy polythene bag held in his right hand was got opened by him and checked thoroughly. In that polythene bag, 4 pieces of orange, bananas and below them, a powder like substance was found in a transparent polythene pouch. When asked about the recovered substance, the person told that this powder like substance in the pouch is the drug heroin. On being asked by me ASI, he told his name and address as Parveen S/O Om Parkash R/O back side sheetla mata mandir Vill. Bahlolpur, distt. Mohali, Punjab. Age- 47 yrs. I ASI checked the recovered narcotics substance at the spot by calling Narcotics drug Detection Kit from the official vehicle and found the substance recovered to be heroin positive. Then I ASI informed about the circumstances of recovery of heroin to SHO PS-ANTF Sec-11 Chandigarh. When asked, the accused Parveen could not produce any license/permit for keeping the said heroin in his possession. Every possible effort was made to include the people coming and going from the spot in the police party by telling them about the recovery of heroin, but all the people, citing their legitimate compulsions, kept leaving the spot without disclosing their name and address. And when I ASI weighed the recovered heroin along with the transparent polythene pouch on electronic weighing machine, the total weight was found to be 55.88 grams of heroin. When I ASI took out the recovered heroin from the transparent pouch and put it in a separate transparent pouch whose empty weight is 62 milligrams, and weighed it and found a total of 55.62 grams. Out of 55.62 grams, the weight of the empty polythene pouch is 62 milligram and the same was subtracted. On checking, the total weight of heroin was found to be 55 grams. Then, I ASI took out the fruits (perishable items) from the black colored bag and distributed it among the needy and passersby. By putting the recovered heroin weighing 55 grams along with the pouch in a plastic box in the same black colored polythene and putting the plastic box in a white cloth cover, a parcel of heroin was prepared and the parcel was stamped with the two stamps of HS, sample stamp was prepared separately on a plain cloth, the instruction forms were filled out on the spot. After the seal was used, the seal was handed over to witness ASI Jitender Kumar 2901/Cp and

the recovered parcel of heroin weighing 55 grams alongwith sample seal was taken into police custody via fard as evidence. The witnesses signed the fard. The abovesaid accused Parveen has committed the crime U/S 21 NDPS Act by keeping 55 grams of heroin in his possession illegally without (license/permit. Resultantly, a writing was sent to the police station through HC Vikas Ali 1835/CP for registration of case against Parveen S/O Omaparkash R/O back side sheetla mata mandir Vill. Bahlolpur, distt. Mohali, Punjab. Age- 47 yrs. The FIR Number be informed pursuant to the registration of case. MHC is directed to send second I on the spot. I ASI alongwith co-officials in busy in investigation on the spot from near T-point, Sector 39 C/D, U.I. Chandigarh at 6 AM. Dated 01.03.2024. Case was got registered. This is a chance recovery. A request was made to MHC Crime Branch, Sector 11 to send 2nd IO on the spot.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused namely Parveen and the quantity of contraband involved in the present case is non-commercial in nature i.e., 16.23 grams of *heroin*.

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 on the ground that the petitioner is involved in other cases, therefore, does not deserve the concession of regular bail.

4. Analysis

Considering the custody period already suffered by the petitioner i.e., 8 months and 17 days, as is evident from the perusal of the custody certificate and quantity of contraband is non-commercial in nature added with the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would

curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the 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.

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 lend the petitioner in a situation of denial the concession of bail.

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.

(SANDEEP MOUDGIL)
JUDGE

22.11.2024

Meenu

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