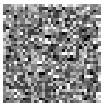


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2024:PHHC:158988



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58912-2024
DECIDED ON: 29.11.2024

MANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Virender Kumar, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the third time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.05, dated 07.03.2024, under Sections 21(b) & 27 of NDPS Act and Section 411 IPC, registered at Police Station Cantt Bathinda, District Bathinda.

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

“Copy of Ruga, "Station House Officer Fateh, "Today present ASI alongwith HC Kuldeep Singh No. 368/Bathinda, PHG Abhimanyu Kumar 22331 on a

Government Vehicle numbering PB03W5977 which was being driven by ASI Beant Singh 434/Bathinda in connection with patrolling and checking of suspicious persons. When the police party while patrolling was going from Village Bibiwala to Village Gobindpura towards Canal then at about 6.10 PM when police party reached near bridge on Canal minor behind the Canal, then on the left side alongwith Canal minor one person with shorn hair in the cover of trees was sitting on a motorcycle and was searching the white transparent bag which he was holding in his hands. Then present ASI got stopped the vehicle and apprehended the person sitting on the motorcycle with the help of fellow colleagues and asked his name and address. He told his name Mandeep Singh S/o. Sukhpal Singh S/o. Teja Singh R/o. Near Mata Mandir Burj Sema Police Station Kot Fatta, District Bathinda. In the transparent bag which he was holding in his hand Chitta (Heroin) could be clearly seen and on the tank of the motorcycle one lighter, panni and 10 rupees Indian currency note which had been rolled had been kept. Present ASI checked the Chitta (Heroin) which could be clearly seen in the transparent bag and weight the same on a computer scale whose weight alongwith plastic bag came out to be 8 grms. The same alongwith the plastic bag was put in a plastic container and parcel was prepared and separate parcel was prepared of lighter, panni and rolled Rs. 10/- Indian currency note. Both the parcels were stamped by the present ASI with seal IS and sample seal was prepared separately. Seal after use was handed over to HC Kuldeep Singh No. 368/Bathinda. During the proceedings independent witness was tried to be joined but no independent witness could be joined. On the checking the motorcycle it was found bearing number PB30S 6225 make Hero. In the

tool box of the motorcycle or with the accused no documents pertaining to the motorcycle were found. Parcel containing 8 gms. recovered heroin in plastic container and parcel containing lighter, panni and Rs. 10/- rolled Indian currency note duly stamped with seal IS alongwith sample seal and motorcycle bearing aforesaid number were taken in police possession vide separate recovery memo. On the memo ASI Beant Singh 434/Bathinda and HC Kuldeep Singh No. 368/Bathinda appended their signatures as witness. On carrying out of personal search of Mandeep Singh aforesaid from the front pocket of the shirt which he was bearing Rs. 60/- Indian Currency note were recovered which were taken into police possession vide personal search memo and signatures of the witnesses were obtained on the memo and Mandeep Singh also appended his signatures. Mandeep Singh aforesaid by keeping in his possession 08 gms. heroin has committed an offence U/s. 21B/61/85 NDPS Act. Therefore ruqa for registration of FIR against Mandeep Singh aforesaid under the aforesaid sections is being sent through PHG Abhimanyu Kumar No. 22331 to the bolice station. After registration of the FIR number of the same be intimated. Present ASI alongwith fellow colleagues is busy in investigation at the spot. Sd/- Iqbal Singh ASI Police Station Cant Bathinda Dt. 07.03.2024. Today within the limits of Village Bibiwala near Bridge over Canal at 7.05 PM. On receipt FIR under the aforesaid sections against the aforesaid accused is registered and record is being completed. Copy of the FIRs alongwith special report are being sent through SC Sumandeep Singh 47/Bathinda to the Worthy Duty Magistrate Sahib and officers. DCR is being informed. Case file alongwith original ruga is given to arrived

PHG Abhimanyu Kumar 22331 and sent to AS! Iqbal Singh 288.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, 08 grams of heroin was recovered from the present petitioner. He further contends that the quantity of recovered contraband is non-commercial in nature. It has been contended on behalf of the petitioner that challan stands presented to Court on 03.05.2024 and charges have been framed on 22.05.2024.

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 three other cases.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 19 days for which the petitioner has suffered incarceration; the quantity of recovered contraband is non-commercial in nature in addition to the fact that investigation is complete, challan stands presented to Court on 03.05.2024, charges have been framed on 22.05.2024 and out of total 15 prosecution witnesses, only one witness has 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.

29.11.2024

Poonam Negi

(SANDEEP MOUDGIL)

JUDGE

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