



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62218-2024
DECIDED ON: 17.12.2024

SUKHWINDER SINGH ALIAS SUKHI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Khaira (Ichhewal), 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 the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.64, dated 21.07.2023, under Sections 22, 25 of NDPS Act, registered at Police Station Jodhan, District Ludhiana.

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

“Officer in charge police station Jodhan today, I, including ASI Kabal Singh 135, Senior Constable Satwinder Singh 815, Lady Senior Constable Rajwinder Kaur 925, Sepoy Sukhpal Singh 946 were patrolling for checking the persons, we were present at Lohgar Chowk Narangwal, then a motorcycle splendor black color PB-10-FT-4459 which was driven by a person having hair

cut and a woman were coming. The police party signaled him to stop. The motorcycle driver stopped the motorcycle and on asking the name of the motorcycle driver, he told his name is Sukhwinder Singh alias Sukhi son of Rajpal Singh age about 40 years and the woman sitting behind said her name Sukhwinder Kaur alias Renu wife Sukhwinder Singh resident of Gujarwal age about 35. First Sukhwinder Singh alias Sukhi son of Rajpal Singh resident of Gujarwal police station, while showing my uniform, told that I am ASI Harpreet Singh of Jodhan police station. I am wearing full uniform and name plate. I have a doubt that some narcotic substance in the envelope attached to the handle of your motorcycle. I told Sukhwinder Singh alias Sukhi that the envelope attached to the handle of his motorcycle should be searched and then issued a notice under Section 50 of the NDPS Act, which was verified by the Witnesses And Sukhwinder singh. Then Sukhwinder Kaur, the woman sitting behind the motorcycle, was told by ASI that I am wearing full uniform and name plate and accompanied by lady senior constable Rajwinder Kaur who is wearing a full uniform and has a name plate attached then asked her that the envelope attached to the handle of his motorcycle should be searched and then issued a notice under Section 50 of the NDPS Act, which was verified by the witnesses and Sukhwinder Kaur. I told sukhwinder singh that you have the right to search yourself and your motorcycle by a magistrate or a gazette police officer. You can get it from the officer. Which can be called, on which Sukhwinder Singh alias Sukhi said that he is sure that you alone can search me and our motorcycle. Consent was written, After which ASI told Sukhwinder Kaur that you and your motorcycie The envelope hanging by the handle is to be searched. You have a legal right

that you own and You can get your motorcycle searched by a magistrate or a gazetted police officer. to whom Opportunity can be called but Sukhwinder Kaur said that I am sure that you can search for me and our motorcycle. Consent was written. All possible attempts were made to make a police party including private witnesses, but private witness could not be found. Then with the help of fellow employees including Myself ASI searched Sukhwinder Singh alias Sukhi and the envelope attached. After opening and checking the envelope attached to the motorcycle number PB-10-FT-4459, some drug tablets were found. After counting, 1018 tablets were in total found and 1, ASI put the envelope into a cloth bag and prepared a pulanda and stamped it with his stamp letter HS. Sample stamp prepared separately. Sukhwinder Singh alias Sukhi and Sukhwinder Kaur are being investigated. Sukhwinder Singh alias Sukhi and Sukhwinder Kaur could not submit any permit or license for keeping 1018 open narcotic tablets in their possession. Every possible attempt was made to arrange a private witness. Thus, Sukhwinder Singh alias Sukhi and Sukhwinder Kaur committed the crime by keeping 1018 tablets in their possession. Case u/s 22,25-61-85 of the NDPS Act registered. Therefore, the accused Sukhwinder Singh alias Sukhi and Sukhwinder Kaur have been sent to police station Sukhpal Singh 946. Special Report No. 42 NDP Act is being prepared and sent manually to Senior Constable Satwinder Singh 815 Constituency Monitoring Officer. By filing a case, the number should be made aware of the case. DC R should be notified. Special reports to be issued. I am looking forward to the opportunity of fellow employees including ASI. True/- Harpreet Singh ASI Police Station Jodhan Date 21.07.2023 Today at Lohgarh Chowk Narangwal

Time 02:25 PM Today Police Station Hasab Aamde Rukka The case of the said crime has been registered and registered along with the original FIR through ASI Harpreet Singh No. 3062/PAP is sent to Sukhpal Singh 946. The special report of the said case is being sent to Ct Chiranjiv Singh No. 969 in the service of District Magistrate Sahib and senior officers. DCR is being notified.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, 1018 intoxicant tablets were recovered from the alleged motorcycle which was being driven by the present petitioner and his co-accused Sukhwinder Kaur @ Renu as pillion rider, who has already been granted the concession of regular bail by this Court vide order dated 31.05.2024 (Annexure P-4) passed in CRM-M-27545-2024. He further contends that nothing has been recovered from the conscious possession of the petitioner. It has been further contended that the petitioner is a man of clean antecedents as he is not involved in any other case.

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 1018 intoxicant tablets were recovered from the alleged motorcycle, which was being driven by the present petitioner.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 02 months and 27 days for which the petitioner has suffered incarceration; co-accused Sukhwinder Kaur @ Renu as pillion rider, who has already been granted the concession of regular bail by this Court vide order dated 31.05.2024 (Annexure P-4) passed in CRM-M-27545-2024; nothing has been recovered from the conscious possession of the petitioner; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 11.12.2023, charges have been framed on 11.12.2023 and out of total 11 prosecution witnesses only 01 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.

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.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)

JUDGE

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