

2024:PHHC:161073



240 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH

CRM-M-59468-2024
DECIDED ON: 03.12.2024

DAMANJEET SINGH @ DAMAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Raj Chaudhary, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS has been invoked seeking regular bail to the petitioner in FIR No. 3, dated 17.01.2023, under Sections 22 of NDPS Act, 1985, registered at Police Station Tallewal, District Barnala.

2. *Facts*

The facts as narrated in the FIR reads as under:-

“Copy of ruga. SHO Tallewal. Sir, today I along with Sub Inspector Dalvinder Singh No.630/BR,C, constable Angrej Singh No.676/BR, PHC Lakhwinder Singh No.47929 were patrolling on the govt. vehicle No. PB 19 H 1607 which is being driven by Resham Singh No.301/BR along with laptop, printer in search of suspicious persons and places were going from bridge canal of Bilah side towards Moochiniwal road,

which the police party reached little behind of Moom road Chinniwal tower, then the time was around 7:35 PM, then at the place of tower three persons were found sitting out of which one person was holding a plastic bag who on seeing the police party got nerves and started running from there by throwing the plastic bag which were in their possession. Then the strips containing the tablets were scattered from the bag then I Sub Inspector at that time stopped the car and with the help of fellow officials got caught of three young persons. On being enquired, the first person who thrown the plastic envelope disclosed his name as Damanjit Singh alias Daman son of Gurtej Singh resident of Gehal, second person disclosed his name as Avenpreet Singh alias Baby son of Pargat Singh resident of ChinniwalKhurd and third person disclosed his name as Kamaljit Singh alias Goldy son of Amrik Singh resident of ChhinniwalKhurd. Then I tried to join some independent witness by looking near by but no person was found. Then I sub inspector who have got caught of three clean shaven persons namely Damanjit Singh alias Daman, Avenpreet Singh alias Baby and Kamaljit Singh alias Goldy have been served notice under Section 50 of the NDPS Act, separately. Then I Sub Inspector has collected the scattered strips containing pills which was thrown in a plastic bag and were scattered on the ground in which Clovidol-100 SR strips were found, which upon counting comes to 72 trips Clovidol- 100 SR and each strips contains 10/10 Tramadol Intoxicant tablets and were having batchNo.TVD 20093 MFG, May 2020, Exp. APR, 2023 were recovered which were taken into police possession and by putting 72 Clovidol-SR containing 720 tablets in the same plastic bag. Parcel was prepared. I have endorsed my seal with impression S.S and one separate sample was prepared. After endorsing my seal I have handed over it to Sub Inspector Dalvinder Singh No.630/BR. I Sub Inspector along with my seal and sample prepared one separate recovery which was taken into police possession and were signed on farad correctly. Then I Sub Inspector who has caught hold of three persons out of which Damanpreet Singh alias Daman son of Gurtej Singh resident of Gehal. Search memo has been prepared and no cash has been recovered which was signed by accused and witnesses. Then I Sub Inspector Karamjit Singh alias Goldy son of Amrik Singh resident of ChinniwalKhurd. Search memo has been prepared and no cash has been recovered which was signed by accused and witnesses. Then I Sub Inspector AvenpreetSingh alias Baby son of Pargat Singh resident of ChinniwalKhurd. Search memo has been prepared and no cash has been recovered which was signed by accused and witnesses. Then I Sub Inspector has enquired about the licence from the three above said accused from whom 72 trips containing 720 tablets of Clovidol-SR has been recovered which they cannot produce. So Damanjit Singh alias

Daman, Avenpreet Singh alias Baby and Karamjit Singh alias Goldy have committed an offence punishable under Section 22, 61, 85 of NDPS Act for keeping in possession 72 strips of clovidol-100 SR, Tramadol 720 tablets. So, ruqa has been sent for registration of FIR against the above said accused persons and is sending it through PHG Lakvir Singh No.47929 by taking a print out after typing.”

3. **Submissions**

On behalf of the petitioner:-

It has been contended on behalf of the petitioner that he has been falsely implicated in the present case. It is further contended that it is a case of chance recovery and the FIR was registered against three persons including the petitioner. It is an admitted case of the prosecution that no recovery has been effected from the personal possession of the petitioner. In fact the alleged contraband i.e. 720 tablets of Clovidol-100 SR has been shown to be recovered from the ground by the police party, meaning thereby, nothing has been recovered from the conscious possession of the present petitioner.

He relies upon the orders dated 01.05.2024 and 08.07.2024 passed by this Court in CRM-M-3147-2024 and 29920-2024, whereby, the co-accused namely Avenpreet Singh @ Baby and Kamaljeet Singh @ Goldy have already been granted the concession of regular bail. The petitioner is also similarly situated with that of his co-accused.

On behalf of respondent-State

Learned State counsel has prayed for dismissal of the present petition stating that the accused were three in total and were distributing the contraband amongst themselves carrying in transparent polythene. He does not controvert the fact granting regular bail to the co-accused of the petitioner.

As per the custody certificate filed by learned State counsel, the petitioner has suffered incarceration for a period of 1 year 8 months and 16 days, as of now, who is not involved in any other case of any nature whatsoever.

4. Analysis

Considering the custody period undergone by the petitioner i.e. 1 year 8 months and 16 days added with the facts that the co-accused have already been granted the concession of regular bail by this Court; after framing of charges on 03.07.2023, out of total 17 prosecution witnesses 4 have been examined and 5 have been given up, which is sufficient for this Court to infer that conclusion of trial would certainly take sufficient time, this Court is of the considered view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would also curtail his right 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.

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.

03.12.2024

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**(SANDEEP MOUDGIL)
JUDGE**

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