

2024:PHHC:163654



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60425-2024
DECIDED ON: 09.12.2024

GURDAS SINGH ALIAS GEETU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. N.S. Sodhi, Advocate with
Ms. Prabhleen Kaur, 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 under Section 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.5 dated 05.01.2021, under Sections 21 & 29 of NDPS Act, 1985 registered at Police Station Vairoke, District Fazilka.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

“SHO PS Vairoke. Jai Hind. Today I SI along with SC Baljinder Singh No. 902/ FZK, C Karamvir Singh No. 1301/FZK PHG Gurnam Singh 5222 on vehicle No. PB-05-N-6931 driven by CT Karamvir Singh for patrolling and checking of suspected person from Ladhuwala to Suhele wala, Jandwala, Vairoke etc. when the police party went on about ½2 KM from Jandwala to village Kacha Kalewala, then on seeing a Motorcyclist coming speedily from the front side, SI on the basis of suspicion stop the vehicle and came down and with the help of police party gave signal to stop him. The

Motorcyclist perplexed on seeing the police party and tried to turn back then due to rain the Motorcycle slipped and fell down. Then SI with the police party apprehends the motorcyclist and asked his name and address. Who told his name Gurpreet Singh alias Gora s/o Satnam Singh s/o Arhjan Singh r/o Megha Panjgrai PS Guruharsahai. Then SI in the presence of police party Motorcycle hero Honda HF-Deluxe black color without registration Number having tied black color polythene bag with his right side handle whose mouth was lying opened and Heroine was clearly visible. Gurpreet Singh alias Gora by keeping heroine in his possession has committed offence u/s 21/61/85 of NDPS Act. On which ruqa after writing is being sent through PHG Gurnam Singh 5222 to police station for registration of a case against Gurpreet Singh alias Gora. Case number be intimated after registration. Special report be issued. An I/O may kindly be send on spot for for further investigation. I SI along with police party is present on the spot along with Gurpreet Singh alias Gora. Sd/ Iqbal Singh SI I/C PP Ladhuwala daed 5.1.2021 in the area of Village Jandwala at 7.45 PM. Today on receipt of the above said ruqa in the police station above said case under above said offence against above said accused registered and copy of Fir along with original ruqa is being send back with the messenger PHG to SI on the spot. But for further investigation already ASI Balkar Singh 1991/ FZR along with ASI Harkrishan Lal 356/FZK HC Malkiat Singh 379/ FZK.C Gurpret Singh 1195/ FZK C Raj Kumar and PHG Kulwant singh and PHG Hakam Singh are sent on the spot. After issuing the special report those are being send through senior C Sandeep Singh to Illaqa Magistrate and higher police officers. PCR/FZK is intimated through e-Mail.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner was not apprehended at the spot and he was implicated on the basis of disclosure statement of co-accused namely Gurpreet Singh @ Gora from whom the recovery has been effected. It is contended on behalf of the petitioner that Gurpreet Singh @ Gora has already been acquitted.

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 petitioner is a habitual offender, as he is involved in another case. Though, is not in a position to controvert the fact that the recovery was effected from another co-accused namely Gurpreet Singh @ Gora, who has been acquitted.

4. Analysis

Considering the submissions made by the petitioner that no recovery has been effected from him and co-accused namely Gurpreet @ Gola from whom admittedly the recovery was effected, already stands been acquitted added with the fact that the petitioner has already suffered sufficient incarceration i.e. 3 months and 2 days, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case challan is yet to be presented, which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

09.12.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No