

2024:PHHC:010060

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

110

CRM-M-64821-2023

Date of Decision : January 25, 2024

DAVINDER SINGH ALIAS BABA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.Japjit Singh Johal, Advocate  
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

**KULDEEP TIWARI. J.(Oral)**

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.292, dated 17.12.2020, under Sections 22(a) of the Narcotics Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dasuya, District Hoshiarpur.

**BRIEF FACTS AND ALLEGATIONS AGAINST THE  
PETITIONER**

2. The petitioner was arrested while carrying 110 grams of intoxicant substance which was subsequently found to be 'Alprazolam'. The petitioner was arrested at the spot on 17.12.2020 and thereafter, he was enlarged on interim bail by the learned trial Court concerned on 19.01.2021, owing to non-receipt of the FSL report, however, a condition was imposed to re-surrender, within a week of the receipt of FSL report,

if the recovered substance was found to be a narcotic contraband. However, the petitioner, after receipt of the FSL report, did not cause appearance before the trial Court concerned, which led to his being declared as a proclaimed offender, vide order dated 07.07.2023, and, he was re-arrested on 21.07.2023.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

3. The learned counsel for the petitioner submits that the alleged contraband, which was recovered from the present petitioner, is marginally higher than the commercial quantity, as the commercial quantity of the alleged recovered contraband, as prescribed under the schedule, is 100 grams, whereas, the allegedly recovered contraband is 110 grams.

4. He further submits that though the petitioner was granted interim bail and was subsequently declared as “proclaimed offender”, however, he had never misused the concession of interim bail.

5. He further submits that the petitioner was not found to be involved in any other criminal case of similar nature during the interregnum period. Therefore, considering the conduct of the petitioner, he deserves to be enlarged on regular bail.

6. He further submits that the petitioner has suffered incarceration of more than 07 months.

***SUBMISSIONS OF THE LEARNED STATE COUNSEL***

7. On the other hand, learned State counsel opposes the grant of regular bail to the petitioner.

8. Custody certificate *qua* the petitioner has been filed by the learned State counsel today in Court, which is taken on record. It depicts that the petitioner has suffered incarceration of 07 months and 09 days as on today. It further reveals that though the present petitioner is not involved in any other offence, under the provisions of NDPS Act, but he is involved in one more case under the IPC, wherein, he has undergone the entire sentence.

9. He further, on instructions imparted to him by ASI Satnam Singh, informs this Court that charges have already been framed in the instant matter, and, out of total 09 prosecution witnesses, as cited in the final report, 06 witnesses have already been examined.

#### ***ANALYSIS***

10. “*Bail is the Rule and Jail is an Exception*”. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled “***State of Rajasthan V. Balchand alias Baliay***”, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

11. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts

shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

12. In “**Nikesh Tarachand Shah V. Union of India**”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

*“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-*

*“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was*

*observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.*

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

*“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a*

*socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”*

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

*“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”*

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

*“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”*

*It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”*

13. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme

Court has insisted upon striking a perfect balance of sanctity of an individual's liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

*3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.*

14. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

15. The reason for forming the above inference emanates from the factum that:- (i) the charges have already been framed; (ii) the custody certificate makes revelations that petitioner has faced incarceration of 07 months and 09 days as on today; (iii) out of 09 prosecution witnesses, 06 witnesses have been examined.

**FINAL ORDER**

16. Considering the fact that the petitioner has already suffered incarceration of 07 months and 09 days, and, 03 more prosecution witnesses are yet to be examined, and, the petitioner was earlier granted the concession of regular bail, and the alleged contraband recovered from the petitioner is marginally higher than the prescribed commercial quantity, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail, on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

17. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

**January 25, 2024**  
*dharamvir*

**(KULDEEP TIWARI)**  
**JUDGE**

|                            |   |        |
|----------------------------|---|--------|
| Whether speaking/reasoned. | : | Yes/No |
| Whether Reportable.        | : | Yes/No |