

2024:PHHC:167224



214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61752-2024
DECIDED ON: 13.12.2024

LOKENDRA BAHADUR THAPA ALIAS LUIS THAPA
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurabh Bahmani, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 106, dated 15.09.2022, under Sections 20/61/85 of NDPS Act, 1985, registered at Police Station Mullanpur, District SAS Nagar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of Rukka, "Station House officer, Police Station Mullanpur Garibdas, today myself Inspector/Station House office was present at police station then Munshi informed that the police party along with ASI Rakesh Kumar No.1494 had left regarding the nakabandi, the call was received that Togan Boothgarh Road at (Chauras ta Teera) a young man walking from the Toga side who was having black bag slung over his shoulder and who was stopped for checking who is not allowing to be touched touch himself and the black bag slung over his shoulder, but it is full suspicion that there is a drug in the bag of person stopped. Therefore, was informed to send competent investigation officer. Upon which

myself Inspector/Station House officer alongwith Dalwinder Singh No.30 Mohali, Havaladar Gurpreet Singh No.1376/Mohali on a government vehicle bearing No.P.B. 65 X 2373 whose driver is Sandeep Kumar No.2396 alongwith investigation kit and personal laptop/printer went to the spot at ChaurastaTira where ASI Rakesh Kumar alongwith police party and the person stopped were found present who upon my asking disclosed his name Lokdar Bahadur Thapa @ Luis Thapa son of Tek Bahadur Thapa resident of Jai Prithvi Nagar Palika, War No.5, District Bajag Nepal. Upon which myself ASI told the Lokdar Bahadur Thapa that I am Inspector Satinder Singh posted as Station House Officer at Mullanpur Garibdas (Punjab). I have suspicion that you have narcotic substances in the bag slung on your shoulderbecause of which I want to search your bag and you. Therefore, you have a legal right that you can get conducted your search from any Gazette Officer of Punjab government or Magistrate, who can be called at the spot or you can be taken to them for search and you can also search for the present police party. On which the person stopped said after a lot of thought that I want to search myself and my bag from any gazetted officer and told to call them at the spot. On which for not giving the search of Lokedar Bahadur Thapa, non-consent memo was prepared and read over to him who after admitting the same as correct, put his signature below the statement upon which the witnesses of the witness were taken. Upon which myself Inspector/Station House Officer at 8:30 PM from my mobile NO.9780001574 called Sh. Dharamvir Singh, PPS Deputy Superintendent of Police, Sub Division Kharar-2 on his mobile NO.98157-80395 and informed about the same and requested to come present at the spot. Upon which Deputy Superintendent of Police, Sub Divisoin Kharar-2 alongwith gunman on a government vehicle No.PB 65A X 5934 came at the spot, who told Lokadar Bahadur Thapa that my name is Dharamvir Singh PPS, am posted as Deputy Superintendent of Police at Sub Division Kharar-2 and I am the gazetted officer of Punjab Government and in a uniform I am present at the spot.I have suspicion that you have narcotic substances in the bag slung on your shoulder because of which I want to search your bag and you. Therefore, you have a legal right that you can get conducted your search from any other Gazette Officer of Punjab government or Magistrate, who can be called at the spot or you can be taken to them for search and you can also search for the present police party. On which the person stopped said after a lot of thought that I have full faith upon you can search myself and the bag slung on my shoulder. On which the consent memo of Lokedar Bahadur Thapafor giving his search was prepared and read over to him who after admitting the same as correct, put his signature below the statement upon which the witnesses of the witness were taken. According to the instructions of Deputy Superintendent of Police Sub-Division Kharar 2, myself Inspector Station House Office kept the

black bag hanging on the shoulder of Lokedar Bahadur Thapa on the ground and opened the zip, in which 2 transparent plastic envelopes were found, one envelope was checked which was filled with small plastic bags and upon checking the charas was to be found upon which myself Inspector/Station House Office weighed with the electronic weighing machine in the investigation kit which was found to be 6 kilograme charas alongwith the envelop. Then the second plastic envelope was opened and checked, from which round black pills wrapped in a transparent plastic wrap were recovered, upon checking the same was also found to be charas which was verified by Lokedar Bahdaur Thapa. Upon weighing with the electronic weighing machine was found to be weighed 03 kilogrames alongwith the envelop. Lokader Bahadur Thhapa could not produced any license or permit with regards to both the 03 kilogrames bags. Upon which myself Inspector/Station House Office closed both the plastic envelopes and put the same into the recovered bag colour black and after keeping the bag into a plastic bag, a parcel was prepared and the parcel was sealed with my stamp SS and sample parcel was separately prepared. After using the stamp was handed over to ASI Dalwinder Singh No.30 Mohali. Then Deputy Superintendent of Police Sub Division Kharar-2 sealed the above parcel and sample with his stamp DS and sample stamp was seen and attested and DSP kept his stamp with him. Then myself Inspector/Station House Office took the bag of Palanda Charas weighing 09 kilogram which was sealed with one seal of SS and DS along with the sample seal sample stamp was taken into police possession vide recovery memo. On the memo witnesses of the accused and witnesses were taken. Lokedar Bahadur Thapa have committed the offence under Section 20-61-85 of NDPS Act by keeping 09 kgs charas into his possession. Therefore, the ruqais being sent to police through senior constable for registering the FIR under Section 20,61,85 of NDPS Act against Lokdar Bahadur Thapa @ Luis Thapa son of Tek Bahadur Thapa resident of Jai Prithvi Nagar Palika, War No.5, District Bajag Nepal. After registering the FIR file number be informed. Special reports be prepared. I alongwith fellow official busy at the spot. Today at the area of Village Teera at 10:40 PMSd/- Satinder Singh INSP, Station House Officer Mulanpur Garibdas dated 15.09.2022.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the allegations levelled against him are absolutely false, vague and not supported by any cogent evidence. He further

submits that the petitioner has been in custody since 15.09.2022 and not involved in any other case, meaning thereby he is a person of clean antecedents.

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, but could not put forth any incriminating material to connect the petitioner with the alleged commissioning of offence.

4. **Analysis**

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 2 years 2 months and 23 days and not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 17.02.2023, charges stand framed on 29.03.2023 and out of total 11 prosecution witnesses only 4 have been examined, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner 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 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.

(SANDEEP MOUDGIL)
JUDGE

13.12.2024

Meenu

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*