

2024:PHHC:167258



213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61734-2024
DECIDED ON: 13.12.2024

MEHAR SINGH
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Amandeep Kaur, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 132, dated 07.10.2023, under Sections 21/61/85 and 29 of NDPS Act, 1985 added later on, registered at Police Station Tapa Mandi, District Barnala.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of Ruga 'Officer Incharge, P.S. Tapa, Fateh, Today I, ASISukhvir Singh 568, HawaldarSukhchain Singh on Government Vehicle bearing No. PB-13BA-1824 whose driver was C-2 Jagsir Singh, 401 in connection with patrolling and checking of suspected persons were present at Naka on Tapa to Dhilwan road bridge drain in the area of Tapa. That the time will be around 6:25 PM, during

Nakabandi, from Dhilwan side one motor-cycle make Bajaj Pulsar 135, colour black bearing registration No. PB-08-CG-4419 was seen coming at a very high speed. On the basis of suspicion, the motorcycle was stopped and name and address of the driver of motorcycle was asked who disclosed his name and address as Navi son of Om Parkash resident of Anandpur Basti, Tapa. His appearance is, age 24 years, height 5 ft 10 inch, slim body and agile, mole mark on right eye and cheek, hairs and beard are trimmed. Navi was having one brown colour leather Gym bag of round shape with him, the ASI have suspected that a Narcotic Drug is contained in the said bag. Then I ASI tried to join private witness from nearby, but could not join any one. Then I ASI told to Navi that "I have suspicion that in the brown colour bag which is in your possession seems to have some narcotic thing, therefore, I want to search your bag, but you have right that, if you want to be searched in the presence of any Magistrate Sahib or Gazette Officer, then I can call any of one at the spot or I could brought you alongwith your before any of them" after informing above, Notice Under Section 50 NDPS was prepared, upon which Navi and Witnesses have signed. Then I ASI told Navi that, "I Tek Chand is ASI of Punjab Police, and posted as Investigation Officer at C.I.A. Barnala, I wore uniform as per my rank and name plate of my name is attached". that "I have suspicion that in the brown colour bag which is in your possession seems to have some narcotic thing, therefore, I want to search your bag, but you have right that, if you want to be searched in the presence of any Magistrate Sahib or Gazette Officer, then I can call any of one at the spot or I could brought you alongwith your before any of them". On that Navi told that I have heard and understood everything which you have said and you can search my bag, I have full faith with you". Upon which consent statement of Navi above was recorded and the same was witnessed by the witnesses. Then I ASI searched the bag of Navi in the presence of witnesses. On search apart from clothes one transparent envelop found from side zip pocket of the bag which was checked after opening the same and narcotic power of white colour was recovered from that, same was checked with drug-detection kit and said power is found to be as Heroin. Recovered Heroin is weighed with computer measurement (Kanda), the same is of 50 grms., white colour intoxicate powder (Heroin). The same has put in the same envelope and parcel was prepared by me ASI. The parcel was sealed with seal 'TC'. Sample of seal was prepared separately. The seal after use has been handed to ASISukhvir Singh No. 568/ Barnala. Then I ASI searched the above motorcycle, and original Re has been recovered which on the name of Parminder Singh Chatha S/o Piara Singh, Chatha, R/o Kotla Bhagu, P.O. Nurpur, Tehsil Nakodar, District Jalandhar. Then I ASI, had taken in possession the sealed parcel of narcotic powder, motorcycle make Bajaj Pulsar 135, colour

black bearing registration No. PB-08-CG-4419 along with original R.C., leather bag of brown colour the memo was witnessed by the witnesses. Then I ASI, conducted personal of search in which Mobile Phone make Vivo, Golden Colour, Touch Screen and Currency notes of Rs. 470/- was taken into police possession vide separate memo, which was witnessed by the witnesses. The I ASI, prepared a site plan. Navi above committed an offence u/s 21/61/85 NDPS Act by keeping the narcotic powder of white colour (Heroin) in his possession. Thereafter, the Ruga is being sent through Const. Gurpreet Singh/831 to police station for registration. After registration of case, number be informed.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused from whom the recovery of alleged contraband was effected. It is further submitted on behalf of the petitioner that he is not involved in any other case, meaning thereby he is a person of clean antecedents. The attention of this Court has been drawn to an order dated 15.01.2024 (Annexure P-3) vide which co-accused namely Navi has already been granted the concession of regular bail.

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 3 months and 13 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 26.09.2024, charges stand framed on 21.10.2024 and

out of total 15 prosecution witnesses none have been examined yet, 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.

13.12.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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