



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

232

CRM-M-61646-2024

DATE OF DECISION: 12.12.2024

HARPREET SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.K.S. Brar, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 483 of BNSS has been invoked seeking regular bail to the petitioner in FIR No. 135, dated 28.08.2022, under Sections 15-C, 27 and 29 of NDPS Act, 1985, registered at Police Station Sangat, District Bathinda.

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

‘Copy of Ruqa, to the Station House Officer, Police Station Sangat District Bathinda, Fateh, Today myself ASI along with HC Lovejit Singh No. 598/Bathinda, S/Ct Amandeep Singh No. 2176/Bathinda, CT Yadwinder Singh No. 478/Bathinda and SCT Shivraj Singh No. 620/Bathinda computer operator carrying laptop and printer and other accessories on government car Bolero Capper bearing registration No. driven by PB03-AT-0395 being S/CT Gurwinder Dass No. 811/Bathinda had done from CIA Staff-2 Bathinda and were going through main road Bathinda, Dabwali, Sangat Kainchian towards village Pathrala in connection



with patrolling and elements and when search the reached within the area Gurthari about 100 mtrs Refinery road at of bad police party of village back from main road Bathinda- Dabwali T-point then a swift car bearing registration No. PB03-BJ-3330 colour Silver and one Ghora Truck Tralla bearing registration No. Pb03-AJ-5998 were lying parked on the back side of said Swift car on the right side of main road. Two youngmen were sitting in the driver and conductor seat of this car and two heavy plastic Gatta/bags colour black were lying on the back seat of car and two were youngmen standing on heavy plastic Gatta/bags lying backside the in the colour black body of Truck/Tralla and on looking the police party, the riders of the car have closed the windows of car and tried to start the car, in the meantime, myself SI have got stopped our vehicle, came out from my car and apprehended the riders of said Swift car and two youngmen standing in the body of said Truck with the help of associate officials at 02.15 PM and asked their whereabouts then the person sitting seat of car has stated turn on by turn the driver his name as Harpreet Singh son of Boota Singh son of Ram Krishan resident of ward No.07, village Ramditte Wala, Police Station Sadar, District Mansa and the person sitting on the conductor seat of car has stated his name as Bahadar Singh son of Sikandar Singh son of Ganda Singh resident of near Main Bus stand village Rajgarh Kubbey, Police Station Maur District Bathinda and out of two youngmen who alighted from the body of truck, one has stated his name as Sukhpal Singh@ Rojas son of Narinderpal Singh son of Surta Singh resident of near Harijan Ramdittewala, Dharamshala, village Police Station SadarMansa, District Manna and second person has stated his name as Kuldeep Singh son of Phula Singh son resident of of Dalbara Singh street No. 26, Ward No. 15, village Mahinangal, Police Talwandi Sabo District Bathinda. Station In the meantime a motorcycle make Splendor seen coming from village Pathrala side and Jagsir Singh son of Mani Ram resident of village Ankorgarh @ Machhana, Police Station Sangat District Bathinda met us, who has been intimated about the facts of case and joined in the police party. On



having doubt of any intoxicant material in the heavy plastic Gatta/bags colour black lying in the car and truck, myself ASI told above said Harpreet Singh, Bahadar Singh sitting on the driver and conductor seat of the car, respectively and Sukhpal Singh@ Roja and Kuleep Singh apprehended from the body of truck by fulfilling the proceedings under section 50 of NDPS Act that I, Gurinder Singh No. 251/Bathinda posted as Investigating Officer in CIA Staff-2, Bathinda, I in uniform and my am plate and symbol of my rank are name affixed on my uniform. I have doubt that there is some material intoxicant in your swift car bearing registration No. PB03- BJ-3330 colour Silver and Ghora Truck Tralla bearing registration No. Pb03-AJ- 5998, therefore search of you and your car and truck is to be conducted under NDPS Act, but you have legal right that you can get done the search of you, your car through truck and any Gazetted officer or Magistrate or you along with your truck and car can be taken before the Gazetted office or Magistrate, the above said four boys have shown their consent and stated that we want to get done the search of us, our car and truck before any Gaztedd officer Magistrate. Therefore the consent memos of Harpreet Singh, Bahadar Singh, Sukhpal Singh @ Roja and Kuldeep Singh have been prepared separately and myself ASI four has intimated him persons about and private the witness said and about the facts of case, whereupon the Deputy Superintendent of Police (Rural), Bathinda has verified Harpreet Singh, he names of Bahadar Singh, Sukhpal Singh @ Roja and Kuldeep Singh and private witness and on finding the facts to Superintendent be of Bathinda has stated correct, Police to said Deputy (Rural), Harpreet Singh, Bahadar Singh, Sukhpal Singh @ Roja and Kuldeep Singh turn by turn by informing about his identity that I, Narinder Singh, PPS, posted as Deputy Superintendent Bathinda, I of Police (Rural), in uniform and my am plate is affixed on my uniform name and I am Gezatted officer of the Government of Punjab. I have doubt that there is some intoxicant material in your swift car bearing registration No. colour Silver and Ghora PB03-BJ-3330 Truck Tralla bearing registration No. Pb03-AJ-5998, therefore search of you and your car and truck is to be conducted



under NDPS Act, but you have legal right that you can get done the search of you, your car and truck through any Gazetted officer or Magistrate or you along with your truck and car can be taken before the Gazetted office or Magistrate, the above said four boys have shown their consent and stated turn by turn that we have trust upon you, you can conduct the search of us, our car and truck, thereafter the consent memos of Harpreet Singh, Bahadar Singh, Sukhpal Singh @ Roja and Kuldeep Singh have been prepared separately by Deputy Superintendent of Police (Rural) Bathinda on the basis of consent given by said persons and also prepared the memos regarding intimation about the rank, which are read over to the said four youngmen hearing turn by turn, their consent admitting the same to who, memos be after and correct, appended their respective signatures and the witnesses signatures on have also appended the consent their memos. Thereafter on the basis of consent given by Harpreet Singh, Bahadar Singh, Sukhpal Singh @ Roja and Kuldeep Singh, Deputy Superintendent of Police (Rural), Bathinda with the help of associate officials, conducted the search of swift car No. bearing registration 3330 colour Silver then two PB03-BJ- plastic Katta/ bags colour black the mouth of which from were closed with rope, of said the backseat recovered car, which have been brought out and checked it by opening the same, then poppy husk recovered from said plastic Katta/ bags. Thereafter myself SI with the help of associate officials have checked the truck Ghora Tralla 18 Tyres bearing registration No PB03-AJ-5998 then eight plastic Katta/ bags colour black were lying in the first row in the body of Ghora Tralla, which were seeking different from the other plastic Katta/bags and its mouths were tied with rope, same have been brought down from the truck an checked turn by turn the poppy husk recovered from it also. The mouths of said plastic Katta/ bags tied with the same ope and weighted the flat o omputerized weighing machine then the weight of each plastic Katta/ bags is found to be 20 Kg i..e. total 200 Kg poppy husk recovered. Thereafter Deputy Superintendent of Police (Rural) Bathinda has sealed the said plastic Katta/ bags Sr. No. 1 to 10 with his seal bearing impression NS and also attested the



parcels and sample of seal. Thereafter 18 plastic Katta/ bags loading with salt recovered from the said Truck Ghora Tralla thereafter the cabin of said Ghora Truck has been checked but no intoxicant material recovered from it and RC No. PB03-AJ- 5998 recovered from the dashboard, which is in the name of Nirmal Singh son of Gurmail Singh resident of village Bhucho Kalan, District Bathinda and issued from the office of RTA, Bathinda, on which Chassis No. AE05298 and Engine No. 37770 is written, which is matching with Ghora Truck Tralla and also found a Affidavit Power Of Attorney which is given by Nirmal Singh son resident of of Gurmail Singh village Bhucho Kalan, District Bathinda in the name of Harpreet Singh son of Boota resident of Ramditta Wala, District Mansa and same has been attested by Notary Public and a work permit of vehicle No. PB03-A- 5998 No.PB/3/GP/HR/2018/2049 which is issued from RTA Bathinda in the name Nirmal Singh son resident of of of Gurmail Singh village Bhucho Kalan, District Bathinda, the documents from 21st November, 2018 to 20th November, 2023 not found. On checking of car, its Chassis No. 31840 and Engine No. 16134 found. Thereafter the said parcel plastic Katta/ bag having Sr. No. 1 of to 10 along with sample of seal, one Truck Ghora Tralla, one permit, one regarding Power of Attorney, affidavit on Billity Bill and slip of Dharamkanda, one Ghora tralla bearing registration No. PB03-AJ- 5998 having white colour Cabin, orange colour Tralla 18 tyres and a swift car bearing registration No.PB03-BJ- 33303 colour silver have been taken into the possession of police through memo and signature of witnesses have been taken on the memos and Deputy Superintendent of Police (Rural) Bathinda has attested the said memo. Thereafter as per the instructions of Deputy Superintendent of Police (Rural) Bathinda, myself SI has conducted the personal search of accused Harpreet Singh, Bahadar Singh Sukhpal Singh@ Roja and Kuldeep Singh as per the consent given intoxicant by them, but material recovered from them. On conducting personal search of accused Harpreet Singh, the currency notes of Rs. 900/- along with one mobile phone make Vivo Touch screen colour blue SIM No. 98779-12045 and 98143-



05998 recovered from the front side pocket of his shirt, which have been taken into the possession of police through personal search memo and signature of witnesses and accused Harpreet Singh taken on the memo. personal search of On conducting accused Bahadar Singh, the currency notes of Rs. 600/- along with one mobile phone make Vivo Touch screen colour Sky blue SIM No. 99889-84897 and 88475-26535 recovered from the front side pocket of his shirt, which have been taken possession of into the police through personal search memo and signature of witnesses and accused Bahadar Singh taken on the memo. On conducting personal search of accused Sukhpal Singh @ Roja no cash recovered from him and one mobile phone make Vivo Touch screen colour white SIM No. 62394-74400 and 73472-04518 recovered from the front side pocket of his shirt, which have been taken into the possession of police through personal search memo and signature of witnesses and accused Sukhpal Singh @ Roja taken on the memo. On conducting personal search of accused Kuldeep Singh the currency with notes of Rs. 200/- along one mobile phone make Vivo Touch screen colour black SIM No. 79869-10110 and 95011-79569 recovered from the right side pocket of his lower, which have been taken into the possession of police through personal search memo signature of and witnesses and accused Kuldeep Singh taken on the memo and all these personal search memos have been attested by Deputy Superintendent Police (Rural) Bathinda. of Accused Harpreet Singh, Bahadar Singh, Sukhpal Singh @Roja and Kuldeep Singh could not produce any permit or license to keep 200 Grams of poppy husk in their possession, therefore, they while So, have committed offence under section 15- C/61/85 of NDPS Act, Therefore the Ruqa is being sent to the Police Station by the hand 478/Bathinda Yadwinder of CT Singh for registration of No. case under above said section against Accused Harpreet Singh, Bahadar Singh, Singh @ Roja and Kuldeep register case, number of intimated. Special reports Singh. the be Sukhpal After same sent be to the offices and Ilaqa Magistrate. Myself SI along with associate officials is busy for further investigation at the spot. Sd/- SI Gurinder Singh No.



251/Bathinda, CIA Staff-2 Bathinda Dated: 28.08.2022 Mobile No. 94637-65156 within the area of main road T-point Bathinda-Dabwali refinery Gurthari, at 07.00 PM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the allegations against the petitioner are that he was arrested at the spot from the car and shown as driver of the case. As per the prosecution narration, 40 kg. of poppy pods has been recovered from the car and 160 kg. poppy pods has been recovered from the truck which was apprehended along with the car. Learned counsel for the petitioner contends that the car from where 40 kg of poppy pods was recovered falls under the non-commercial quantity. He has argued that the petitioner was shown as driver of the truck whereas he is not the registered owner of the truck and one Nirmal Singh is the registered owner of the truck and the same has been released on superdari from the Trial court vide order dated 04.02.2023, moreover, the police has also submitted the report regarding the ownership of the above said Nirmal Singh.

He points out that co-accused namely Bahadur Singh has already been granted concession of regular bail vide order dated 22.03.2024 passed in CRM-M-38303-2023 considering the fact that he was present in the car from where the recovery has been effected. He further points out that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed



the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 2 years, 3 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that total 200 kg poppy pods was recovered, out of which 2 bags were recovered from the car, 8 bags were recovered from the truck which was owned by the petitioner on General Power of Attorney but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 2 years, 3 months and 10 days, similarly situated co-accused has already been granted concession of bail by this Court, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 stands presented on 21.02.2023 charges stands framed on 12.04.2023 out of 23 cited prosecution witnesses, only one PW has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

As far as contention qua the ownership of the truck is concerned, the petitioner is not the registered owner of the truck as the same has been released on superdari by one Nirmal Singh from the Trial



court vide order dated 04.02.2023, moreso, the police has also submitted the report regarding the ownership of the above said Nirmal Singh.

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.

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.

(SANDEEP MOUDGIL)
JUDGE

12.12.2024
anuradha

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