



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

244

CRM-M-62634-2024
DATE OF DECISION: 20.12.2024

ARJUN SINGH ALIAS MAHABIR

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Sanghi, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in FIR No.500, dated 14-12-2023, Under Sections 17 (C)/27A/29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Ellenabad, District Sirsa, Haryana.

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

‘To, Respected Officer Police Station Ellenabad Jai Hind. Today on 14-12-2023, Present PSI Parveen Kumar, HC Vinod Kumar No.300 / Sirsa, EHC Shankar Lal No. 664 / Sirsa, HGH Balkar Singh 2175 ANC Ellenabad Departmental vehicle No. HR24 GV- 1011 Driver HC Balwan Singh No.44 / Sirsa was present at Udham Singh Chowk Ellenabad on patrol duty with a private laptop printer. One informant informed me that there is one person who is engaged in drug smuggling. If there would be an inquiry or investigation you can catch him. So, the barricading was done properly then Surinder Singh alias Chhinda s / o Ajit



Singh r/ o Sadewal truck driver of the truck no. is number RJ07GB-6645 with a large quantity of opium. PSI stopped by signaling Surinder Singh @ Chhinda s/o Ajit Singh r / o Sadewala PS Rania on suspicion of possession of any narcotic substance. Also, served a notice u/s 50 NDPS ACT that I, PSI Praveen Kumar Incharge ANC Ellenabad, bring the notice to you Surinder Singh @ Chhinda s/o Ajit Singh r/ o Sadewala PS Rania on through notice that I suspect there is any narcotic substance in your possession and in Truck No.RJ07GB-6645 so it is necessary to search Truck No.RJ07GB-6645. You have full legal right to search of your truck no. RJ07GB-6645 right now or you can call a gazetted officer or duty magistrate on the spot to search you and your truck no. RJ07GB-6645 or you can be produced for search along with your truck no. RJ07GB-6645. Please clarify the status of your search and that of your truck No.RJ07GB-6645. Surinder Singh @ Chhinda s/o Ajit Singh r / o Sadewala Police Station, Rania read the notice and understood and gave statement stating that, "I Surinder Singh @ Chhinda s/o Ajit Singh r/ o Sadewala Police Station, Rania, I have listened to the notice given by PSI Praveen Kumar Incharge ANC Ellenabad District Sirsa and understood now I want to get my truck no. RJ07GB-6645 searched on the spot in front of a gazetted officer. After hearing and understanding the notice and the reply notice, Surinder Singh alias Chhinda signed the notice and the reply notice on his own and the witnesses. Then I requested the Gazetted Officer Mr. Ankur Garg SDO Panchayat Raj Rania appointed by the Deputy Commissioner Sirsa to reach the spot by contacting the Gazetted Officer from my personal mobile no. 70159-14203 to the mobile no. 92555-71855 at about 03:30 AM and apprised him of the situation. After which at around 04:00 am, the gazetted officer Mr. Ankur Garg, SDO Panchayat Raj Rania reached the spot by his personal car. Then I informed Surinder Singh @ Chhinda s/o Ajit Singh ro Sadewala PS Rania and Truck No. RJ07GB-6645 Gazetted Officer about the incident and presented before the officer. Surinder Singh alias Chhinda s / o Ajit Singh r / o Sadewala Police Station Rania introduced himself and Gazetted Officer made enquiries and read



the notice and notice reply and then the Gazetted Officer Mr. Ankur Garg, SDO Panchayat Raj Rania asked me to search the said truck no. RJ07GB-6645 and the search of the said truck no. RJ07GB-6645 was carried out as per the rules. When I checked the black coloured pithu bag with sky bags written on it in English on the dashboard in front of the Gazetted Officer Mr. Ankur Garg SDO Panchayat Raj Rania, Surinder Singh @ RJ07GB- 6645, a transparent waxy polythene was found in the back pocket; a black coloured polythene tightly tied with a twine. The black waxy polythene which is transparent, there was opium in the same pithu bag of black colour and after covering it with another cloth turning it into parcel, I sealed the parcel with the seal R.K/3 and prepared the sample seal. Then presented the Sample Seal along with the parcel Opium Pithu Bag to the Gazetted Officer, Shri Ankur Garg, SDO Panchayat affixed the sample seal with the seal SK / 1 and verified the sample seal with the parcel opium pithu bag. Then, PSI parcel Opium duly sealed with R.K/3, SK / 1 Sample Seal and Truck No.RJ07GB-6645 was taken into possession through Property seizure Memo as proof. The property seizure memo was signed by Surinder Singh @ Chhinda and the witness and the Gazetted Officer verified the property seizure memos and the Gazetted Officer retained the seal after using and the PSI handed over the sample seal to HC Balwan Singh No.44 / Sirsa ANC Ellenabad. Surinder Singh alias Chhinda, son of Ajit Singh, a resident of Sadewala police station, Rania, said that he had brought the opium from a person named Mahabir at Mahabir Hotel on Neemach city bypass. And the man to whom it was meant to be given is Kulwant resident of Bahia. Surinder Singh alias Chhinda son Ajit Singh resident of Sadewala police station Rania kept 2 kg 720 grams of opium in his possession and Mahabir sold opium and Kulwant Singh resident of Bahia ordered the opium and committed the crime under section 17C/61/85 NDPS ACT. Surinder Singh alias Chhinda is an accused in the case. At: Canal Culvert Hanumangarh Road, Ellenabad Sd / PSI Parveen Kumar'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as on the basis of disclosure statement the petitioner was nominated in the present FIR. He submits that the petitioner has nothing to do with the recovery of contraband effected from co-accused, moreso, the recovered contraband is non-commercial in nature.

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 1 year and 2 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in more FIR registered under Excise Act, meaning thereby he is a habitual offender 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. 1 year and 2 days, he was nominated in the present FIR on the basis of disclosure statement and the recovered contraband is non-commercial in nature, 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 12.06.2024



charges stands framed on 09.08.2024 out of total 21 witnesses cited by the prosecution, none 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.

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 land the petitioner in a situation of denial of 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.

(SANDEEP MOUDGIL)
JUDGE

20.12.2024
anuradha

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