



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62220-2024
DECIDED ON: 17.12.2024

BUTA DASS

....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P. S. Sekhon, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. (483 of BNSS, 2023) for grant of regular bail to the petitioner in FIR No.20, dated 30.03.2024, under Sections 18 and 29 of the NDPS Act, 1985, registered at Police Station Longowal, District Sangrur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Copy of Ruga, to the officer incharge Ps Longowal, Jai Hind, sir today I ASI along with ASI Gurbhajan Singh 1646/SGR, SC Chamkaur Singh 843/SGR, SC Hardeep Singh 1976/SGR, CT Hardeep Singh 389/SGR in Govt. vehicle bearing registration no. PB-13AR-6139 being driven by ASI Gurdarshan Singh 870/SGR having laptop and printer along were present at Bus Stand Longowal in relation to barricading and checking of suspicious persons. Meanwhile it was time around 11:00 AM a secret informer came present and informs to I ASI that Kamaldeep Goyal @ Soni son

of Suresh Kumar resident of Sunami Patti, Longowal is habitual of selling opium and he used to sell the same further to customers on retail basis. Today also the said Kamaldeep Goyal@ Soni is sitting in his house and waiting for customers. If raid be conducted immediately in a planned manner then said Kamaldeep Goyal @ Soni can be apprehended red handed along with heavy quantity of opium. His particulars are: - aged about 31 years, Healthy and wearing Maroon and blue colored T-shirt having strips and wearing Green colored Lower. Information being credible and reliable, on which the act of said Kamaldeep Goyal @ Soni by keeping in his possession Opium in this manner and selling the same further fulfils the ingredients of commission of offence under section 18/61/85 NDPS Act. Therefore ruga after writing is being sent to PS by hand SC Hardeep Singh 1976/SGR after taking its printout for the registration of case against said Kamaldeep Goyal ® Soni under said offence. Kindly inform the file no. after registering the case and inform I/C control room Sangrur. Regarding which report under section 42 NDPS Act is being prepared. I ASI along with fellow policemen am leaving for the house of said Kamaldeep Goyal @ Soni for conducting the raid and effecting the recovery. In the revenue limits of Bus Stand Longowal at 11:40 Sd ASI Mehar Singh 484/SGR, I/C Police Post Badrukhan PS Longowal dated 30.03.2024.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was subsequently roped in only on the basis of disclosure statement of co-accused Kamaldeep Goyal @ Sony, from whose possession 02 kgs of opium has been recovered, who has already been granted the concession of regular bail by this Court vide order dated 09.07.2024 passed in CRM-M-31286-2024. He further contends that the petitioner is a man of clean antecedents as he is not involved in any other

case. It has been contended on behalf of the petitioner that the quantity of recovered contraband is non-commercial in nature.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner was the supplier of the aforesaid intoxicant material to the co-accused Kamaldeep Goyal @ Soni, from whose possession the alleged contraband was recovered.

4. **Analysis**

Be that as it may, considering the custody period i.e. 03 months and 18 days for which the petitioner has suffered incarceration; the quantity of recovered contraband is non-commercial in nature; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; main accused Kamaldeep Goyal @ Sony has already been granted the concession of regular bail by this Court vide order dated 09.07.2024 passed in CRM-M-31286-2024 in addition to the fact that investigation is complete, challan stands presented to Court on 16.09.2024, charges have been framed on 09.10.2024 and out of total 17 prosecution witnesses, only 01 witness has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 his 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.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No