



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

243

CRM-M-62559-2024

DATE OF DECISION: 20.12.2024

MOHAMMAD DEEN ALIAS MALI

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Kamlesh, Advocate for
Ms. Amandip Kaur, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief sought

The jurisdiction of this Court has been invoked for the third time under Section 439 of Cr.PC. for grant of regular bail to the petitioner in FIR No.118, dated 18.08.2023, under Section 22 of NDPS Act, registered at Police Station City I, Malerkotla, District Malerkotla.

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

Copy of Ruka: SHO PS City-I, Malerkotla. Jai Hind! Today, I SI alongwith ASI Harjit Singh 696/Sang, SC Karnail Singh 1144/Sang, SC Amritpal Singh 1251/ Sang were patrolling in government vehicle bearing no. PB-65-BA -8115 which was driven by SC Manpreet Singh 385/Sang and checking suspicious person and vehicle and carrying laptop, printer, inverter, etc. and were present near Grewal Chowk, Malerkotla and thereafter, at near about 11 a.m. one secret informer came before me and gave the information that Liaqat Ali @ Marra son of



Mohd. Hanif, resident of Mohalla Takianwala, Qila Rehmatgarh, Malerkotla and Mohd. Deen @ Mali son of Mohd. Ramzan, resident of Kheru Basti, Qila Rehmatgarh, Malerkotla are selling intoxicant vials/ bottles after purchasing the same from outside and today Liaqat Ali a Marra and Mohd. Deen @ Mali are waiting for their customer near the house of Liaqat Ali @ Marra and they are carrying intoxicant vials/bottles and their descriptions are as Liaqat Ali @ Marra colour white, mulla fashion wearing white colour T-shirt and red colour lower, whereas, Mohd. Deen @ Mali is having mulla fashion, wheatish colour and wearing white shirt and red colour lower. In case now the raid is conducted near the house of Liaqat Ali @ Marra then the abovesaid Liaqat Ali @ Marra and Mohd. Deen @ Mali can be overpowered and intoxicant vials can be recovered from them. Information is worthy and reliable. Thereafter, I SI introduce secret informer to the police officials and thereafter, on the basis of given by the secret informer conducted the raid near the house of Liaqat Ali @ Marra and then at near about 11.30 a.m. 2 persons were seeing as per the information near the house of Liaqat Ali @ Marra and out of them one persons is searching something from the white colour plastic bag and they after seeing the car of police party got afraid and ran away from the spot after throwing the white colour plastic bag on the spot. Thereafter, I SI with the help of police officials overpowered the abovesaid persons and asked their name and then one person disclosed their name as Liaqat Ali @ Marra son of Mohd. Haneef, resident of Mohalla Takianwala, Qila Rehmatgarh, Malerkotla and the other person disclosed their name as Mohd. Deen Mali son of Mohd. Ramzan, resident of Kheru Basti, Qila Rehmatgarh, Malerkotla. Thereafter, I SI picked and checked the white colour plastic back which was thrown by the abovesaid persons as themouth of the bag were already opened and from the same vials were seeing and thereafter, from the



plastic bag and the same was counted and therefore, 16 intoxicant vials were recovered and all the vials were marked as RX Chlorpheniramine Maleate & Codeine Phosphate Syrup 100 ml MFG. Lic No. L/ 15/1665/MNB and the batch of all the vials were already erased and MFG date is Jan/2023 and EXP. date Dec/2024. Thereafter, I SI put the recovered 16 intoxicant vials alongwith white colour polythene bag in one cloth bag and prepared the separate bundle. Thereafter I SI tried to join the passengers going from there in the investigation. But every person by disclosing their helplessness did not join the investigation and thereafter, I SI affixed my stamp bearing word BS upon the bundle carrying intoxicant vials and prepared sample separately. The stamp was handed over to ASI Harjit Singh 496/Sang after using the same and thereafter, I ASI took the bundle carrying intoxicant vials having stamps alongwith sample of the stamp into the police custody through separate farad and thereafter, appended the witnesses upon the farad. Therefore, Liaqat Ali @ Marra and Mohd. Deen @ Mali by keeping the intoxicant vials and selling the same further has committed the offence punishable under Section 22/61/85 NDPS Act. and therefore, I SI has sent the ruqa for registering the case under Section 22/61/85 of NDPS Act against Liaqat Ali @ Marra son of Mohd. Hanif, resident of Mohalla Takianwala, Qila Ahmedgarh, Malerkotla and Mohd. Deen Mali son of Mohd. Ramzan, resident of Kheru Basti, Qila Rehmatgarh, Malerkotla after getting the same typed in the laptop and thereafter, taking the printout and sent the same to Police Station City I Malerkotla by hand. SC Amritpal Singh 1251/Sang. Case be registered and file number be informed. Special reports be issued. Control Room Malerkotla be informed. I am investigating on the spot. Today jurisdiction Qila Rehmatgarh, Malerkotla. Time 1.30 p.m. Sd/- Baljit Singh 735/Sang, SI CIA Mehrauna, dated 18.08.2023.”



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the report of FSL, two salts were detected, one of the salt namely Chlorpheniramine Maleate, which do not fall under the NDPS Act and therefore, it would be debatable that whether the alleged recovery actually falls within the ambit of NDPS Act or not. He further contends that nothing has been recovered from the conscious possession of the present petitioner as the alleged recovery was shown from the bag which was lying on the floor.

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 alleged recovery i.e. 16 vials make RX Chlorpheniramine Maleate & Codeine Phosphate Syrup 100 ML MFG was recovered from the present petitioner and his co-accused. He further contends that the petitioner is involved in one more FIR, meaning thereby he is a habitual offender.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 03 months and 26 days for which the petitioner has suffered incarceration and the fact that nothing has been recovered from the conscious possession of the petitioner in addition to the fact that challan stands presented to Court on 22.01.2024, charges have been framed on 15.03.2024 and out of total 12 prosecution witnesses, only



05 witnesses have 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 Nimesh 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



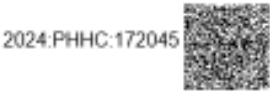
keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

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 concession of bail.

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.

(SANDEEP MOUDGIL)
JUDGE

20.12.2024
anuradha

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