



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

249

CRM-M-63027-2024
DATE OF DECISION: 20.12.2024

LUCKY RAJPUT

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Brahminder S. Toor, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 Bhartiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case FIR No. 61 dated 21.05.2023 registered under section 15 of NDPS Act (section 29 NDPS Act added later on), Police Station Sujanpur, District Pathankot.

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

'SHO PS Sujanpur Jai Hind Today myself ASI alongwith ASI Sohan Lal 1333/PTK, CT Gulshan Kumar 405/PTK, PHG Gagan Singh 977 were checking private vehicles and checking of suspicious persons. For checking from PS Sujanpur we went to Naka Madhopur and were checking vehicles from J&K and then one truck bearing no. JK 13E 8395 Ashoka Leyland was seen coming from Lakhampur side which was signaled to stop and name of the driver was disclosed as Riaz Ahmed Sher Guri S/o Mohd Ramzaan Sher Guri R/o Midhera PS & Teh. Avantipora Distt. Pulwama, J&K. During search 5 plastic bags



were found behind driver seat which were having Poppy Husk. All 5 plastic bags were marked as A, B, C, D & E and were weighed on electronic weighing machine and were found having 20 Kg weight each along with plastic bag. All 5 bags were closed with rope and were stamped as LR1/1 and sample seal along with Form M29 were handed over to ASI Mohan Lal. All 5 bags were taken in possession by preparing memo and truck bearing No. JK 13E 8395 was also taken in possession by different memo. Riaz Ahmed Sher Guri S/o Mohd Ramzaan Sher Guri R/o Midhera PS & Teh. Avantipora Distt. Pulwama, J&K has committed an offence by keeping 100 kg Poppy Husk in his possession and offense U/s 15, 61, 85 is made out. Ruga is sent through PHG Gagan Singh 977 for registration of FIR and after registration of FIR No. be intimated, special reports are also issued to senior officials. Control Room is informed through wireless. Myself ASI alongwith other officials is busy at spot for further investigation. Sd/- Lekh Raj ASI PS Sujampur dated 21.05.2023 at 8:15 pm.'

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. He submits that 100 kg of poppy husk was recovered from the co-accused of the petitioner namely Riyaz Ahmed Sherguri and as per him, he has never met with the petitioner or even talked on phone as he was in custody in another case since 08.06.2021.

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 6 months and 12 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that there are serious allegations levelled against the petitioner as he was operating from the jail and from co-accused 100 kg of poppy husk was recovered 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 6 months and 12 days, recovery of 100 kg of poppy husk was effected from the co-accused 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 20.10.2023 charges stands framed on 08.11.2023 out of total 9 witnesses cited by the prosecution, 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.

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

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No