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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22023-2024

Date of decision: 13.01.2025**Paramjit Singh alias Pammi*****.....Petitioner******Versus*****State of Punjab*****.....Respondent*****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**Relief Sought**

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. seeking the concession of grant of regular bail for the petitioner in FIR No.128 dated 28.06.2023 under Sections 22 and 29 of NDPS Act registered at P.S Lehra, District Sangrur.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ .Contents: Copy of ruqa, to the SHO PS Lehra, Jai Hind. Sir Today I SI along with HC Gursewak Singh 745/SGR, CT Sandeep Singh 989/SGR, SCT Hardeep Dass 197/SGR and PHG Iqbal Khan 26720 in Govt. vehicle bearing registration no PB-13BE-3707 being driven by HC Anwar Khan 817/SGR having laptop, printer, inverter along were present at Giddriani Road, near Bus Stand village Haryeo in relation to patrolling and checking of suspicious vehicles. Meanwhile time around 8:15 PM a persons, secret informer came present and informed to I SI that Sukhwinder Singh @ Karma son of Darshan Singh resident of Haryao are habitual of selling intoxicant tablets by bringing the same from outside. The said



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Sukhwinder Singh @ Karma used to bring intoxicant tablets from outside by using his car make registration Swift Dzire of white color no PB-13BC-0572. bearing the Today said Sukhwinder Singh Karma in his said car make Swift Dezire of white color bearing registration no PB- 13BC-0572 will come towards his village Haryeo by bringing heavy quantity of intoxicant tablets from outside. If barricading be conducted immediately in planned manner at Chowk situated on the road leading towards village Sangatpura from village Haryeo, near Bridge of Minor Canal village Giddriani then said Sukhwinder Singh Karma can be apprehended in his said car along with heavy quantity of intoxicant tablets. Information is reliable and credible. Memo of written secret information under section 41 (1) of NDPS Act was prepared separately regarding receiving of secret information. Memo was being signed by witnesses. The act of said Sukhwinder Singh @ Karma son of Darshan Singh resident of Haryeo by keeping in his possession intoxicant tablets after bringing the same from outside and selling them further fulfils the ingredients of commission of offence under section 22/61/85 NDPS Act. Therefore I SI am sending ruqa to PS Lehra by hand PHG Iqbal Khan 26720 after getting it typed laptop and taking its printout for the registration of case against said Sukhwinder Singh @ Karma son of Darshan Singh resident of Haryeo under the said offence. Kindly inform the file no after registering the case and inform the control room Sangrur. I SI along with fellow policemen I am leaving for conducting barricading at Chowk situated on the road leading towards village Sangatpura from Haryeo, near Bridge of Minor Canal village Giddriani. In the revenue limits of near Bus Stand village Haryeo, Giddriani Road at 8:50 PM Sd/ Jaswinder Singh SI, CIA Sangrur dated 28.06.2023 80546-01119.”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely roped in the present case only in order to pressurize him and

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his family members to compromise in the complaints made by the family of the petitioner against the police officials. The implications of the petitioner based on the disclosure statements of co-accused namely Sukhwinder Singh is without any basis and false recovery of the contraband was foisted on the petitioner.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that a recovery of 1500 intoxicating tablets of Tramadol was effected. The petitioner is a habitual offender and recovery was from the present petitioner alone which is commercial in nature. He has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 01 year, 05 months and 24 days. Challan in this case was presented on 20.12.2023, charges have been framed on 29.04.2024 and out of total 23 prosecution witnesses, none has been examined.

Analysis

5. Be that as it may, considering the fact that the alleged recovery in this case has been effected from co-accused Sukhwinder Singh and given regard to the custody part vide which the petitioner is behind bars for the last 01 year, 05 months and 24 days coupled with the fact that out of total 23 prosecution witnesses, none has been examined so far, this Court is convinced beyond any doubt that the trial Court will take definitely long time to conclude the trial. As far as other cases are concerned, the petitioner has earned acquittal in two of the FIR Nos.47/2017 dated 30.05.2017 and FIR No.99/2019 dated 27.07.2019 whereas in one case bearing FIR No. 33/2023 dated 24.02.2023, the petitioner is not on bail. However he is shown to have



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suffered incarceration for 01 year, 04 months and 07 days. Considering the fact that no prosecution witnesses has been examined so far and the petitioner is behind bars for 01 year, 05 months and 24 days, meaning thereby the conclusion of trial will take a considerable time, this Court is of the view that petitioner cannot be detained behind the bars for an indefinite period, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”

6. 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 as 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 the 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

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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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. on him 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

13.01.2025

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| 1. Whether speaking/ reasoned | : | Yes /No |
| 2. Whether reportable | : | Yes /No |