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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28245-2024
DATE OF DECISION: 16.01.2025

AJAY SINGH

...PETITIONERS

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Hayer, 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 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in F.I.R No. 195 dated 01.09.2023 registered at Police Station Dharamkot, District Moga under section 22,29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

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

‘In charge officer, Police Station Dharamkot. Today, I the Insp//SHO along with ASI Jagmohan Singh No. 93/Moga CT Gurjeet Singh No. 1258 Moga, Phg Gopal Singh No. 23331 were on official vehicle Scorpio bearing registration No. PB-29-L-9604 being driven by CT Jaskaran Singh No. 1029 Moga were going from Udham Singh Chowk to village Jalalabad West in search of bad elements when the police party reached at the T point Jalalabad West at about 11:30 AM, one trimmed hair youngster was seen coming from the opposite side who on seeing the police



party got perplexed and he pulled a black coloured polythene from the right pocket of lower worn by him and he threw it on the road and suddenly tried to turn back who was nabbed on suspicion with the help of accompanying police officials and was enquired about his identity who on enquiry disclosed his name as Baaj Singh son of Chamkaur Singh son of Gora Singh, resident of Bhinder road, village Jalalabad West and an attempt was made to join a public witness but nobody was ready. Then I the Insp/SHO disclosed my identity to above named Baaj Singh and informed him that I am Insp/ Gurvinder Singh and I am posted as SHO Police Station Dharamkot and I am in my uniform and I had worn my name plate, and I disclosed my identity to him and I informed him that I Insp/SHO had suspicion that there is some intoxicating substance in the black coloured polythene which he threw from the right pocket of lower worn by him and possession of same is illegal so his search as well as search of black colour polythene Lifafa thrown by him is to be conducted, but he has got legal right that he can get his search be conducted by any Magistrate or Gazetted Officer who can be called at the spot or he can be taken to them on which the above named Baaj Singh replied that he had full faith in me the Insp/SHO and I can conduct his search and also conduct the search of black coloured polythene thrown by him on road on which the Insp/SHO served a notice under section 50 of NDPS ACT on above named Baaj Singh and notice was signed by Baaj Singh in Punjabi language and was witnessed by Jagmohan Singh No. 93 Moga and CT Gurjeet Singh No. 1258 Moga, then I the Insp/SHO conducted the search of the black coloured polythene thrown by Baaj Singh on road from which tablets of loose tablets of light orange colour were recovered, which were found to be total 50 tables, the recovered intoxicating tablets were put in the same polythene and work converted into a bundle by putting them in a cloth and bundle was stamped by me with my seal bearing impression GS, sample stamp form was prepared separately, stamp after use was given to Jagmohan Singh No. 93 Moga then the recovered intoxicating tables in bundle along with sample stamp form was taken into police possession. Recovery memo was signed



by Jagmohan Singh No. 93 Moga and CT Gurjeet Singh 1258 Moga, then I the Insp asked the above named Baaj Singh to show me the pockets of lower worn by him, who pulled the pockets and turned the pocket upside down and no cash, jewellery, mobile etc. was recovered from Baaj Singh. Search memo was prepared separately. Search memo was signed by above named Baaj Singh in Punjabi language. Search memo was attested by ASI Jagmohan Singh 93 Moga and CT Gurjeet Singh 1258 Moga, above named Baaj Singh could not produce any license or permit for keeping the intoxicating tables in his possession. Above named Baaj Singh had committed an offence under section 22/61/85 of N.d.p.s Act by keeping intoxicating tables in his possession, so ruqa is being sent to police station through PHG Gopal Singh No. 23331 for registration of case against Baaj Singh son of Chamkaur Singh son of Jora Singh, resident of Bhinder Road village Jalalabad West, District Moga, F.I.R No. should be informed after registration of the case. Senior officers and PCR should be informed. Special report should be issued. I the Insp/SHO along with accompanying officials is present at the stop and is busy in investigation. Sd. Gurvinder Singh Insp Police Station Dharamkot. Dated 01.09.2023.

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 nothing has been recovered from the petitioner and the alleged recovery of 50 intoxicating tablets which later on came to be Etizolam weighed 6.06 grams was recovered from co-accused Baaj Singh. He submits that the petitioner was nominated in the present FIR vide DDR No. 19 dated 01.09.2023 on the basis of disclosure statement of co-accused Baaj Singh.

**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, 3 months and 28 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involve in other FIRs. He further points out that during investigation of the present case, it was found that petitioner has been arrested in connection with case bearing FIR No.208 Dated 16.09.2023 u/s 22 NDPS Act PS Dharamkot, so after getting the permission from the Court, the petitioner was formally arrested by the police on 18.09.2023, in the present case bearing FIR No.195 dated 01.09.2023 u/s 22/29 NDPS Act PS Dharamkot and the petitioner was sent to judicial custody.

He further points out that as per FSL report Etizolam salt was found in the recovered tablets and in this way recovery effected in this case falls within ambit of commercial quantity, so provisions of section 37 of NDPS Act have been applicable in the present case. The challan against petitioner and Baj Singh was presented before the Court on 30.11.2023 and charge against them has been framed on 06.12.2023 and now case is fixed for 03.12.2024 for prosecution evidence.

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, 3 months and 28 days, no recovery is effected from conscious possession of the petitioner and he was nominated in the present FIR on the basis of disclosure statement of co-accused Baaj Singh 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 31.11.2023 charges stands framed on 06.12.2023 out of 14 prosecution witnesses, only 2 PWs have 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

16.01.2025
anuradha

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