



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRM-M-29352-2024(O&M)
Date of Decision : March 19, 2025

AMANDEEP KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Durga Dutt Sharma, Advocate
for the petitioner.
Mr. J.S.Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.0102, dated 5.4.2024, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Khara, District SAS Nagar Mohali.

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

“Copy of Rukka To the SHO P.S. Kharar, Sir it is respectfully submitted that I SI along with Jatinder Singh No: 707/ SAS Nagar , Pawitar Pal 993 SAS Nagar constable Ramanpreet singh 1142, SAS Nagar, lady constable Harjinder Kaur 1927 SAS Nagar, Essar Singh 2448 SAS Nagar, with Government vehicle number PB65-AN-3557 whose driver is Sohan Singh No.202/S.A.S Nagar, along with laptop

and printer were on patrolling duty with the investigation kit, and were present at the spot to prevent crime near Gaushala Mundi Kharar, there was an empty space behind the road on the Chandigarh road pass, where checking of the men and the vehicle. We found that one vehicle PB11-CY-1389 make Asoka Leyland 1515 was coming from Gaushala Mundi towards Kharar whereupon the truck driver saw the police party standing ahead and stopped his truck behind and started to turn back, but the truck stopped. The truck driver got down from the truck and started running, which I SI tried to stop the truck driver with the help of fellow co-officials, but due to heavy traffic on the road, the truck driver could not be nabbed and he managed to escape in the mean time a woman got down from the conductor seat of truck and started running away, who was caught by I SI with the help of a female co-officials and asked for her name, who gave her name as Amandeep Kaur, wife of Gurpreet Singh, resident of village Popna, police station Sadar Kharar, District Mohali. On which I SI asked the name of the truck driver from Amandeep Kaur, who said that the truck driver is my husband Gurpreet Singh. On which I SI asked Amandeep Kaur the reason for escaping from the truck driver Gurpreet Singh but did not give any satisfactory reply. On which I SI requested passer-bys to be an independent witness. but every person continued to express his compulsion. On which I SI gave a notice to Amandeep Kaur in front of the witness under 50 NDPS Act that 'My name is SI Charan Singh and I am posted as chonki in-charge of Sunny Enclave Police Station City Kharar. You and your truck are to be searched. But you have the right under the NDPS Act 1985 that you can get yourself and your truck searched by the Magistrate or the competent officer of the Punjab Government, the Gazetted Officer. You can also take them with you or call them here. That you have become aware of your rights? On the said notice, Amandeep Kaur said that yes, I am aware of my rights and further told you can search her and my trunk. On which a consent memo in this regard prepared separately, on which Amandeep Kaur signed in Punjabi and ASI Pavitar pal Singh 933/SAS Nagar and Lady constable Harjinder Kaur No: 1927/SAS signed as witnesses. Then I SI directed to get the search of Amandeep Kaur through female constable Harjinder Kaur with the full dignity of Amandeep kaur. But no narcotic substance was recovered from her during search. On which personal search memo

was prepared separately and the same was signed by Amandeep Kaur and Pavitar Pal Singh no. 993/SAS Nagar and Harjinder Kaur signed as witnesses. Then the SI conducted a search of the truck cabin, then during the deep search, a white plastic bag was found under the driver's seat, which was opened by the SI and poppy husk was found. And the said plastic bag was weighted on electronic scale machine and the weight of the bag is 15 kg including plastic bag, on which I SI asked Amandeep Kaur about recovered poppy husk, who could not give any satisfactory answer from the spot regarding poppy husk. On which I SI prepared sample by putting recovered 15 kg contraband in a plastic bag in a separate cloth bag of white colour and stamped the sample parcel with his seal as C.S. and same was handed over to Pavitar pal Singh No.993/SAS Nagar along with the sample seal, was seized by the police, and SI Pavitarpal Singh No.993/SAS Nagar and Lady constable Harjinder Kaur got signed it Cas witnesses.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the police party had recovered 15 kgs poppy husk from the truck and also allegedly recovered 85 kgs more from the house of the petitioner making it 100 kgs, however, no such recovery has been effected from the petitioner or from her house. He would further submits that the story of the police is totally false and frivolous and all the formalities were done by the police while sitting in the Police Station and not at the place of occurrence.

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 contraband i.e. 100 kgs of poppy husk falls under the commercial quantity.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 11 months and 10 days as of now added with the fact that after framing of charges on 30.8.2024, out of total 14 prosecution witnesses, no one has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period. Moreover, the petitioner is having clean antecedents. However, the State has failed to demonstrate the specific assertions and aspersions raised against the raiding party wherein the time of apprehending the truck is itself in dispute except the identity of the truck being disputed, which is not sufficient enough to decline the concession of regular bail as this issue is debatable and can be established only during the course of trial.

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 her 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.

March 19, 2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No