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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43155-2024
DECIDED ON: 28.01.2025

BALWINDER SINGH @ BILLI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tarun Vir Singh Lehal, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 60, dated 19.06.2024, under Sections 21(a), 27-A and 29 of NDPS Act, 1985, registered at Police Station Kalanaur, District Gurdaspur.

2. Facts

Facts as narrated in the FIR reads as under:-

*“To : The Station House Officer, Police station Kalanaur, "Jai Hind".
Today, I SI alongwith Rajan Kumar No. 441/GSP, HC Hira Lal No. 523/ GSP, HC Sukhdev Singh No. 541/ GSP were present at Baba Kaar Ji Colony, Kalanaur on government vehicle Scorpio for patrolling where, the secret informer came and gave information that*

Balwinder Singh @ Billi son of Ajit Singh, resident of Baba Kaar Colony, Kalanaur sells intoxicant powder (Chita) and is still sending intoxicant powder (Chita) in his newly built house. If raid is conducted, he can be caught red handed. On this, I, SI alongwith fellow employees reached 50 meter ahead from Gurudwara Sahib Baba Kaar Ji on a government vehicle where one Hindu young boy seen in front of newly built house towards southern side of the street who try to escape from the spot after seeing the police party but I, SI alongwith fellow employees overpowered him when he tried to throw the polythene bag holding in his right hand and asked his name and address. On asking, he disclosed his name as Balwinder Singh @ Billi son of Ajit Singh, resident of Baba Kaar Ji Colony, Kalanaur. Efforts were made to join the public witness in the police party before checking the polythene bag holding by him in his right hand but everyone showed their inability and left the place. on this, I, SI has checked the polythene bag of Balwinder Singh @ Billi holding in his right hand in presence of the fellow employees. On checking, heroin has been recovered from the polythene bag regarding which, Balwinder Singh told that it is heroin. The same has been taken out from the polythene bag and weighed on the computerized scale, which comes to 5 gms. heroin. The same has been put again in the polythene bag and parcel of which has been prepared by putting it into the plastic box. Then on the personal search of accused, drug money i.e. 16 Indian currency notes of Rs. 500/- each 1 totaling to Rs. 8000/- has been recovered from the right pocket of his trouser. A separate parcel of which has been prepared. The parcel containing the Indian currency notes and the parcel containing heroin have been sealed with SS/1 impression and the same have been taken into police possession vide separate memos. Sample seal has been prepared separately. The seal after its use has been delivered to ASI Rajan Kumar No. 441. As the accused Balwinder Singh @ Billi son of Ajit Singh, resident of Baba Kaar Colony, Kalanaur has committed Offence under sections 21-A, 27-A, 61, 85 of NDPS Act by keeping 5 gms. heroin and drug money of Indian currency notes of Rs. 8000/- in

his possession. So ruga is being sent to the police station through HC Hira Lal No. 523 for registration of case. Number be informed after registration of case. Special reports be issued and the same be sent to the Illaga Magistrate and senior officers. Intimation be given at the control room through wireless. I, alongwith fellow employees are busy in the investigation at the spot. Sd/- Satnam Singh, SI Police station Kalanaur, Dated: 19.06.2024. Today in the area near Gurudwara Baba Kaar Ji at 04.55 PM.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and he has not committed any offence and nothing was recovered from his possession and the alleged recovery alongwith drug money is planted one.

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. He prays for dismissal of the present petition on the ground that the petitioner is a habitual offender, as he is involved in other case.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 7 months and 4 days, as is evident from the perusal of the custody certificate; investigation is complete, wherein conclusion of trial shall take considerable time as out of 8 prosecution witnesses, none has been examined after framing of charges on 19.12.2024 so far, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time

and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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.

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 lend the petitioner in a situation of denial the concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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

28.01.2025

Meenu

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