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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53595-2024

DATE OF DECISION: 11.03.2025

RAVI @ RAVI KABARIA ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.G.S. Sandhu, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 praying for grant of regular bail to the petitioner in FIR No.0012, dated 15.03.2023, under Sections 21, 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, section 379 of IPC 1860 and section 411 of IPC 1860 (added later on), registered at Police Station Thulliwal, District Barnala (Annexure P-1).

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

‘Copy Officer Incharge, Police Station Thulliwal, Fateh, today I SI/SHO alongwith SI Jagtar Singh 930, Sr. Constable Lovepreet Singh 873, Lady Constable Ninder Kaur 1029 on government vehicle no.P?B-13BA-1834 being driven by ASI Daya Singh 713 in connection with patrolling and checking of suspected



persons were present near Gurughar Bus Stand, Hamidi then time was about 01:45 PM. Then secret information gave information to me secretly that Jaspal Singh son of Harjit Singh resident of Dharamkot, Gurmukh Singh son of Lakhvir Singh, Rinku son of Ujagar Singh, residents of Bhinder Kalan, Raghu Kabaria and Ravi Kabaria residents of Dharamkot have formed a gang of their own who are stealing vehicles and doing business of selling intoxicant on their vehicle Bolero Camper white colour bearing No.PB-30N-4465. Today also they has been seen while selling intoxicant at Amla Singh Wala Drain. If their search be conducted at drain then can be apprehended red handed. I alongwith fellow companions reached at Bridge drain Amla Singh Wala on finding the information solid and reliable then time was about 02:10 PM that above numbered car was parked on the road under the tree placed on path at right side towards the Amla Singh Wala drain at 20 meter away. The vehicle was facing towards the road and there were three young boys were searching the transparent polythene bag placed on bonnet. On seeing the vehicle of police party slow down tried to ran after leaving the polythene bag on the bonnet of the car and three young persons apprehended by the help of fellow companions and asked their name and address then first young boy disclosed his name as Jaspal Singh son of Harjit Singh, resident of Dharamkot, second young boy disclosed his name Gurmukh Singh son of Lakhvir Singh and third young boy disclosed his name as Rinku son of Ujagar Singh residents of Bhinder Kalan. Then I tried to join public witness from nearby and asked the passerby to join as witness but everyone by disclosing their helplessness left the spot. Therefore no one made as witness. Then I introduced myself to apprehended Jaspal Singh above that "I am Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in



police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Jaspal Singh above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which notice under section 50 of NDPS Act and consent memo of Jaspal Singh above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Rinku above that I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Rinku above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which notice under section 50 of NDPS Act and consent memo of Rinku above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Gurmukh Singh above that I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth



transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Gurmukh Singh above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which notice under section 50 of NDPS Act and consent memo of Gurmukh Singh above was prepared. Accused and witnesses put their signatures. Then I SI/ SHO checked the opened mouth transparent polythene bag seen left at the bonnet of the car by Jaspal Singh, Rinku and Gurmukh Singh from which intoxicant substance heroin is clearly, on checking and weighing 290 grams of intoxicant substance heroin alongwith bag was found. Parcel of above recovered intoxicant substance heroin was prepared. Then I SI/ SHO sealed the above parcel with my seal bearing SS and sample seal was prepared separately. Then I SI/SHO conducted the search of above vehicle from which no illegal item and documents regarding ownership was found. Seal after use was handed over to SI Jagtar Singh 930. Then I SI/SHO taken the above sealed parcel sealed alongwith sample seal and above vehicle into police possession vide separate recovery memo. Then I SI/ SHO inspected the spot and prepared the site plan separately. Then I SI/ SHO arrested the accused in above FIR prepared the arrest memo separately. On which accused and witnesses put their signatures. Then I SI/SHO conducted the personal search of Jaspal Singh, Gurmukh Singh and Rinku above then from the right pocket of wearing pant of Jaspal Singh one white colour keypad mobile phone mark Samsung and currency notes of 300, from the left pocket of wearing lower of Gurmukh Singh one black coloured keypad mobile phone marka ITTEL and



currency notes of Rs. 150/- and front pocket of wearing shirt of Rinku currency note of Rs.100/-were recovered, to whom taken into police possession vide separate personal search memo. Personal search memo prepared separately, on which accused and witnesses put their signatures. Jaspal Singh, Gurmukh Singh and Rinku above have committed the offence under section 21, 25/61/85 of NDPS Act by keeping intoxicant substance heroin in their possession and committed offence under section 379 of IPC for committing theft by forming gang. Therefore, ruqa is being sent to police station through Lady Constable Ninder Kaur 1029 for registration of FIR under abovesaid offences against above accused Jaspal Singh, Gurmukh Singh and Rinku. Number be intimated after registration of FIR. I SI/SHO alongwith fellow companions are busy in the investigation at the spot. Today at bridge drain Amla Singh Wala at 6 PM, Sd/- Sukhwinder Singh SI, Station House Officer, Police Station Thulliwal, dated: 15.03.2023., "On receiving ruqa FIR No.12 dated 15.03.2023 under sections 21, 25/61/85 of NDPS Act, 379 of IPC Police Station Thulliwal against Jaspal Singh son of Harjit Singh resident of Dharamkot, Gurmukh Singh son of Lakhvir Singh, Rinku Singh son of Ujagar Singh resident of Bhinder Kalan, Raghu Kabadia and Ravi Kabadia resident of Dharamkot is entered in CCTNS. Record is submitted. Copy of FIR's is being sent in the service of Illaqa Magistrate and Officers. Original ruqa alongwith copy of FIR is being sent to SI Sukhwinder Singh 281/ Barnala Station House Officer, Police Station Thulliwal through Lady Constable Ninder Kaur 1029/Barnala. Control room be intimated.'

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 he was earlier not named in the present FIR and was nominated in the present FIR on the basis of the disclosure statement made by co-accused Jaspal Singh,



Gurmukh Singh and Rinku Singh. He further submits that nothing has been recovered from the present petitioner and whatever recovery was effected that was from co-accused persons. He further points out that whatever recovery was effected that make out a case under the NDPS Act and no offence under Section 379 IPC is made out as it is the prosecution version that the present petitioner is guilty of purchase of stolen transformer oil from co-accused persons who disclosed in their disclosure statement dated 21.03.2023 that they had sold the oil to the present petitioner, therefore, prays for grant of regular bail to the petitioner.

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 6 months and 4 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 involved in one another FIR. He further submits that co-accused Jaspal Singh, Gurmukh Singh and Rinku Singh are apprehended on the basis of the secret information and 290 grams of Heroin was recovered from them but could not show any incriminating material to connect the present petitioner with the said recovered contraband.

4. Analysis

Be that as it may, in view of the above discussion, it can be culled out that there is no iota of truth in the allegations that the present petitioner is involved in drug trafficking by any means whatsoever and the only case put forth by the State Counsel is qua purchase of



transformer oil which is alleged to have been stolen by the co-accused persons and not by the present petitioner as is also evident from the disclosure statement made by co-accused persons. Further, the case of the prosecution is being primarily relied upon the disclosure statement dated 21.03.2023 made by co-accused Jaspal Singh, Gurmukh Singh and Rinku Singh during their interrogation. Further, the petitioner has already suffered sufficient incarceration i.e. 6 months and 4 days, 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 25.11.2024 and charges are yet to be framed and 5 PWs cited by the prosecution are yet to be examined 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. Relief

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

11.03.2025
anuradha

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