

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219

CRM-M-54540-2024

Date of Decision : March 19, 2025

TARIK ASHRAF MIR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Ankur Bansal, 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 483 of BNSS, 2023 (earlier Section 439 of Cr.P.C.) for grant of regular bail to the petitioner in FIR No.81, dated 14.6.2022, under Sections 15, 15(C), 29 of NDPS Act, registered at Police Station Maqsudan, District Jalandhar Rural.

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

“SHO Sahib PS Maqsudan Jai Hind. Today I ASI along with ASI Sukhjinder Singh 1057, ASI Balvir Singh 35, S/CT Harpreet Singh 1302 were doing checking of bad elements by laying nakabandi at Adhi Khui Mand Jalandhar Kapurthala GT Road, A car came from Jalandhar side and same was told to stop by giving signal of torch light and on seeing the police party

the car driver tried to turn it back then I ASI with the help of police officials stopped the car on suspicion and two young men were in it. I ASI turn by turn asked their names and whereabouts on which the car driver gave his name as Rashid Hussain Thokar alias Sahil son of Muhammad Yusuf resident of village Godra police station District Pulwama (J&K) and another gave his name Tariq Asraf son of Muhammad resident of village Gojra police station District Pulwama (J&K) and on reading the car number PB 08 AN 7097 mark Santro was found. I ASI Jung Bahadur after apprising them about my name rank and by informing the post said that there is suspicion that you are having some unlawful item with you and you have legal right to get the search conducted from some Magistrate or can get the search conducted from some gazetted officer and same can be arranged. They said that they have confidence on me and I can get their search and search of the car conducted. On which I ASI prepared their consent memos separately and accused signed it and witnesses put their signatures on it. I ASI tried to join the public witness but nobody was joined. then I ASI with the help of fellow officials with the help of torch light conducted the search of the car and found a plastic bag lying beneath the seat adjacent to the driver seat of the car and on checking the same poppy husk was found in it. I ASI arranged the weighing scale to weight the same and on weighing it came 2 KG. I ASI put the same in plastic bag and prepared its parcel and sealed it with seal J.B and prepared sample seal separately. Seal after use was handed over to ASI Sukhjinder Singh. The 2 KG poppy husk parcel bearing seal J.B and car number PB 08 AN 7097 mark Santro without documents was taken into possession by I ASI. Accused Rashid Hussain Thokar alias Sahil son of Muhammad Yusuf resident of village Godra police station District Pulwama (J&K) and Tariq Asraf son of Muhammad resident of village Gojra police station District Pulwama (J&K) by illegally keeping 2 KG poppy husk with them without permit or licence has committed offence u/s 15-61-85 NDPS Act. The ruqa is written and is sent by hand through S/CT Harpreet Singh to the police station for registration of the FIR. FIR be registered and its number be apprised of. Control room be informed.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that recovery of 20 bags of poppy husk was foisted on the petitioner and there is no direct evidence to show that the petitioner was in possession of any narcotics. He further avers that the recovery is effected from a car make Santro bearing No.PB08AN-70897 which is not owned by the petitioner nor he has got any link with the said vehicle.

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. 500 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. two years, eight months and 23 days as of now added with the fact that after framing of charges on 8.4.2024, out of total 18 prosecution witnesses, none 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 and his co-accused has been granted the concession of regular bail by a co-ordinate Bench of this Court vide order dated 4.10.2024 passed in CRM-M-42847-2024. 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 Nimesh 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.

March 19, 2025
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(SANDEEP MOUDGIL)
JUDGE

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