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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-63048-2024

DATE OF DECISION: 11.03.2025

SUDESH KUMAR ALIAS SHEK ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Thakur, 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 Bhartiya Nagarik Suraksha Sanhita, 2023 for the grant of regular bail in the FIR No. 139 dated 01.11.2023 under section 21(c), 29 of NDPS Act, 1985 P.S Basti Bawa Khel, Jalandhar Commissionerate.

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

'SHO, Police station Basti Bawa Khel, Jalandhar Commissionerate. Jai Hind. Today I, ASI Malkit Singh No. 515 S/R, Pardeep Singh No. 739, C-2 Jasbir Singh 1893 SR/CT Hardeep Kumar No. 1839, SR/CT Parjinder Singh No. 1312 were on government vehicle bearing registration No. PB-08-DS-4498 whose driver is CT Himashu Sehgal 2296 and were on patrolling and checking duty at Baba Bhuda Ji chowk. Then from the credible source information was received that Chandan Verma @ Chandu son of Late Mangat Rai resident of House No. 6 Uttam Singh



Nagar, Near Chiita School, Basti Sekh, Jalandhar who is serving sentence in Kapurthala Jail in connivance with Sudesh Kumar @ Sandhu son of Krishan Lal resident of House No. 664, Mohalla Raseela Nagar, Jalandhar and Harwinder Singh @ Suami son of Late Iqbal Singh resident of House No. EQ-258 Pakka Bagh, Jalandhar, who have just been released on bail from the jail has formed a group. They are bringing intoxicating substance from Delhi and are into the profession of supplying in the nearby area. Today also Sudesh Kumar @ Sandhu son of Krishan Lal resident of House No. 664, Mohalla Raseela Nagar, Jalandhar and Harwinder Singh @ Suami son of Late Iqbal Singh resident of House No. EQ-258 Pakka Bagh, Jalandhar are bring intoxicating substances and are planning to supply. If in case picket is installed and Sudeh Kumar @ Sandhu and Harwinder Singh @ Suami are checked then they can be apprehended with the intoxicating substance. The information being credible and information was disclosed to other companion official, upon which checking of the suspicious persons and vehicle was being done. Then in the meanwhile two clean shaven persons from the side of Kapurthala side towards the canal side was seen coming on foot. Then out the two clean shaven persons, one clean shaven person on seeing the police party, threw the black colour polythene bag on the roadside on grass, from the right pocket of the trouser worn by him and tried to run from the spot. Then I, S.I. on the basis of suspicious apprehended them and enquired about their names and address, upon which clean shave person disclosed his name as Sudesh Kumar @ Sandhu son of Krishan Lal resident of House No. 664, Mohalla Raseela Nagar, Jalandhar and the second person disclosed his name as Harwinder Singh @ Suami son of Late Iqbal Singh resident of House No. EQ-258 Pakka Bagh, Jalandhar. Then on my enquiry about the polythene bag thrown by them but did not gave satisfactory answer but when I asked again strictly then they disclosed in one voice that they polythene bag thrown contain ICE, which has been brought by us from Dawarka Delhi from one Nigro person. Before conducting the search of the polythene bag thrown by Sudesh Kumar @ Sandhu, we tried to join the independent



witness into police party but all the independent persons showed their unwillingness and no one joined as witness a police party. Then I, SI in the presence of the police party checked the black colour polythene bag thrown by the Sudesh Kumar @ Sandhu then on checking it was ICE like intoxicating substance. Then on weighing the recovered intoxicating substance, it was 110 grams. The recovered intoxicating substance was backed in a container and a parcel was prepared. The parcel was sealed with my seal SS and a sample seal was prepared separately and after using the al, the seal was handed over to ASI Malkit Singh No. 515. The oxicating contraband was packed and a parcel was prepared with the seal was taken into police possession vide separate recovery memo. Then on asking Sudesh Kumar @ Sandhu and Harwinder Singh @ Suamidisclosed that this contraband has been brought by us on the asking of Chandan Verma @ Chandu from Dawarka, Delhi to supply in Jalandhar. Sudesh Kumar @ Sandhu and Harwinder Singh @ Suami in convivence with each other for having in possession 110 gram of ICE has committed an offence under section 21C/29/61/85 of the NDPS, Act.'

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. He contends that from the perusal of the FIR it is revealed that the petitioner has been apprehended by the police party on the basis of the secret information. He further contends that recovery of 110 grams of ICE was not recovered from the conscious possession of the petitioner while it is the story of the prosecution that on seeing the police party, one accused took out black colour polythene envelope from right pocket of the pant worn by him and threw it on the ground and tried to fled away which is very hard to believe. 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 1 year, 3 months and 22 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 many other cases and recovery of 110 grams ICE has been recovered from him though could not controvert the fact that the same was effected from a polythene bag.

4. Analysis

Be that as it may, the story of the prosecution seems to be doubtful as regards recovery part is concerned because why would a person on seeing the police party would take out envelope from his pant and threw it on the ground and try to flew away. Apart from that the petitioner has already suffered sufficient incarceration i.e. 1 year, 3 months and 22 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 29.04.2024 charges stands framed on 30.07.2024 out of 11 prosecution witnesses, none has 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. **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*