



237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-559-2025
Date of Decision: 15.01.2025

KARTIK

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Fateh Singh Bhullar, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The present petition has been filed under section 483 B.N.S.S, praying for grant of regular bail to the Petitioner in case FIR No. 33, dated 25.05.2024 under Sections 25 of Arms Act and Section 120- B of IPC (Offences U/s 29 of arms act added later on)registered at Police Station State Special Operations Cell, Amritsar, Annexure P-1.

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

Today, I ASI who was present in the office when in FIR number 30 dated 19.05.2024 under section 27-A of NDPS act, 25 Arms Act, 120B of IPC when accused Harpal Singh 9 Bholu son of Surjit Singh, resident of Baba Deep Singh colony. kuptgarh, P.S. Chehrata district Amritsar during interrogation, gave a disclosure statement in presence of Shri Balbir Singh PPS/DSP/CI/ASR and witnesses that in January 2023, I used to work as a painter. During this time, in order to find work. I was present at Chehrata chowk Amritsar. Where I came in contact with one, Shanker Bhaiya. Shanker Bhaiya also used to come to Chehrata chowk



Amritsar in order to find work. One day, Shanker told me that one of his acquaintances has country made pistols which he wants to sell, and if any of your contacteracquaintance reads country made platoin, then he can tell him. Regarding ente, I talked with my old acquaintance, Charanjeet Singh & Channa Bon of Ravinder Singh, resident of Lahori Mal Gharinda, district Amritsar, who is Indulged in smuggling of heroin and weapons and he asked me to purchase countrymade platola, and keep them with an. Then I asked Shanker Bhaiya to show me all the pistols. Then the next day above mentioned, Shanker Bhaiya met me near Chehrata chowk Amritsar and showed me one country made pistol 315 bore and one country made pistol 32 bore and I bought them for Rs. 10,000 which I further sold to kartik son of Rajkumar, resident of Mira wali Basti, Bhatti District Taran tarn, foreign amount of Rs. 15,000 at asking of Charanjeet Singh. Then in the month of September/October 2020, I was working in Putlighar and doing work of paint where I came in contact with Sehaj Pratap Singh, son of Navdeep Singh, resident of Azad Nagar, putlighar, district Amritsar. Sehaj told me that he has one pistol 9MM along with magazine which he wants to sell, and if he knows any party who wants to purchase it, then he can tell him. Then I told Charanjeet Singh about the pistol and he said that you get the pistol and keep it with you and we will further sell it and gain profit. Then I got one pistol 9MM along with mirgabine from Sehaj and kept it with me and told him that I pay you the money once I sell the pistol. In the month of November 2023, I met Charanjeet Singh @ Channa who said that he has one pistol 30 bore along with magazine, which he wants to sell and I told him that I already have one 9MM pistol, but Charanjeet Singh asked me to keep his pistol with me and if I find a buyer, then sell the pistol. Then I took the 30 bore pistol from Charanjit Singh and kept it with me. I packed both the pistols in a Polythene bag and have hidden them in a pit which I dug, near my house in a pear farm on Sher Shah Suri Road. After about 2-4 days on asking of Charanjeet Singh Alias Channa I went to Amarkot to collect a heroin package. When I was coming back after collecting the heroin package police officials of P.S.Valtoha caught hold of me, arrested me and registered FIR against me and later I was sent to sub jail patti. I never informed the police about the above said pistols, and only I know about them and I can get recovered one 9MM pistol along with magazine and one 30 bore pistol with magazine. Senior



officials were informed about the disclosure statement of the accused Harpal Singh, and they reason to believe the recovered ammunition in the case is a case of international smuggling and a case of interstate smuggling and a separate investigation is required in the present case. I AST has been asked by the senior officials to register Investigation and on separate the FIR banin of and carry out the disclosure statement of accused Harpal Singh. On this a case against accused Harpal Singh, Karthik, Charanjeet Singh channa, Sehaj Pratap Singh, Shanker Bhaiya under section 25 of arms act and 120B of IPC is made out, ruqa is being entered and is being sent to the police station for registration of FIR by hands of deputed officer. CT Samir 5/674 to P.S. S.S.O.C. After registration of FIR, number of the FIR be intimated, special reports be prepared, Control Room be informed. On asking of the officials, SI Shivraj Singh 9/2014, along with SI Parminder Singh 5166/IT, ASI Gurbir Singh 5/2016, ASI Lakhbir Singh 75/317, CT Amritpal Singh 75/2005 along with laptop kit and printer on official government vehicle leave for district Taran tarn, etc and I SI along with SI Bhupinder Singh 2958/IT, SI Jagjit Singh 5/72, SI Gurmeet Singh 9/1582, ASI Gagandeep Singh 5/2046, along with accused Harpal Singh on official government vehicle along with laptop and printer leave for recovery of the pistols. At: - office, CI, Amritsar at 6:40 PM, SD/ S.I Jagdeep Singh 5/2089, counter intelligence, Amritsar dated 25.05.2024. Today Police Station 1 at this time above set statement, FIR is being registered under the above, said section against above mentioned accused. Original statement along with copy of FIR is being sent to the investigating officer SI by hands of deputed officer for further investigation. Special reports are being prepared and being sent to Laka magistrate Sahib and Senior officials by hands of de officer HC Jagdish Singh 9/856 and Control Room is being informed via telephone. FIR: Report number 22 at 6:50 PM, date 25.05.2024.

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case on the disclosure statement of main accused Harpal Singh @ Bholu and the investigation agency has



failed to place any substantial evidence on record to establish that the petitioner has ever participated in the alleged crime. No specific allegation or injury has been attributed to the petitioner. He further submits that no independent witness has joined the investigation. It has been contended on behalf of the petitioner that challan stands presented to Court on 22.07.2024 and charges are yet to be framed. He further submits that co-accused had already been granted bail vide order dated 26.06.2024.

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.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 18 days for which the petitioner has suffered incarceration; no specific injury or allegation has been attributed to the present petitioner by the complainant in addition to the fact that investigation is complete, challan stands presented to Court on 22.07.2024, charges are yet to be framed and out of total 15 prosecution witnesses cited none has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 firsttime 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 his 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

15.01.2025

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*