



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-63470-2024

DATE OF DECISION: 07.01.2025

HARPREET SINGH ALIAS HARMAN ALIAS BATO

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.D.S. Nigha, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the Petitioner/applicant in case FIR No. 83 Dated 24.11.2023 U/S section 22/29 of NDPS Act registered at P.S. Ciy Raikot, District Ludhiana (Rural).

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

‘SHO PS City Raikot, Jai Hind. Today I, ASI slongwith S/Ct. Ramjit Singh 273, S/Ct. Major Singh 825, Ct. Varinderpal Singh 199 by riding Government Vehicle Bolero No. PB10-GK-4170, which was driven by Ct. Arshdeep Singh 48, and by taking along laptop, printer were going from Raikot to Talwandi Road for area patrolling and checking of suspicious persons and vehicles and when police party reached in the area of Model Town Colony Raikot then one youth having trimmed skull hair was seen coming from ahead from Talwandi side on foot who had worn jeans pant and light blue colour jeans jacket, who on seeing police party



coming towards him took out one transparent bag and threw in the grass at right side of the road and suddenly turned back and tried to slip away. On the basis of suspicion I, ASI apprehended him with help of co-employees and asked him about his name and address and on asking he disclosed his name as Harpreet Singh @ Harman @ Bato son of Jaiwinder Singh son of Bholi Singh, resident of Near Namdhari Shahidi Samarak, Guru Nanak Pura Mohalla, Raikot. In compliance with section 50 NDPS Act I, ASI said to Harpreet Singh @ Hazman @ Bato that I, ASI Ravinder Kuamr am posted as Investigating Officer at PS City Raikot. I and my co-employees have worn uniform of our rank and have attached name plate of our name. I have suspicion of having any intoxicating substance in your possession and/or in bag thrown by you at the corner of road, thus you and bag thrown by you have to be searched but you have legal right that if you want then you can give your search and search of polythene bag thrown by you to Gazetted Officer or any Magistrate, either of them can be called at the spot or you along with your bag can be take before either of them. Whereupon, Harpreet Singh @ Harman @ Bato said that I have full faith on you, you can search me and transparent bag thrown by me. Whereupon, I, ASI wrote consent memo of Harpreet Singh @ Harman @ Bato. Harpreet Singh @ Harman @ Bato and witnesses gave their signatures on consent memo. Then I, ASI searched Harpreet Singh @ Harman @ Bato and then I got lifted the transparent bag thrown by him from him and checked it and white colour loose intoxicating tablets and strips of intoxicating tablets were recovered for. inside the bag. On counting recovered white colour loose intoxicating tablets total were 80 intoxicating tablets, and on counting recovered stripe of intoxicating tablets total were stripe, every strip having 10/10/ tablets, total 80 tablets, VYADO MD | NRX Etizolam Tablets JP 1 Batch No. DNTCO8029 written on all the strips. I put recovered 80 white colour loose intoxicating tablets in same transparent bag, then put in cloth bag and prepared parcel and put recovered 08 strips total 80 intoxicating tablets of brand VYADO MD 1 NRX Etizolam Tablets JP 1 mg Batch No. ONTC06029 in one separate cloth bag and



prepared parcel. I sealed both above mentioned parcels with my stamp impression RK, prepared sample seal separately. After use I handed over my stamp to S/Ct. Ramjit Singh 273. At the spot I tried to join any private witness with police party but everybody went away from the spot while expressing their helplessness. Then I, ASI took one parcel of 80 white colour loose intoxicating tablets sealed with stamp impression RK and one parcel of 08 strips total 80 intoxicating tablets of brand VYADO MD 1 NRX Etizolam Tablets JP 1 mg Batch No. DNTC08029 sealed with stamp impression RK alongwith sample seal in police custody with seizure memo. Signatures of witnesses taken on memo. Accused Harpreet Singh @ Harman @ Bato by keeping 80 white colour loose intoxicating tablets and 08 strips total 80 intoxicating tablets of brand VYADO MD 1 NRX Etizolam Tablets JP 1 mg Batch No. DNTC08029 in his possession has committed an offence punishable u/s 22-61-85 NDPS Act. Therefore, Ruqa is being sent to police station by the hand of Ct. Varinderpal Singh 199 for registration of FIR against above mentioned Harpreet Singh @ Harman Bato under above mentioned sections and for preparing and sending special report u/s 57 NDPS Act to Circle Officer. Number be intimated after registration of FIR. Special reports be issued. Intimation be given at control room. I, ASI alongwith co-employees am investigating. Today present at Raikot to Talwandi Road Near Model Town Colony Raikot at time 07:10 PM. Sd/- Ravinder Kumar ASI PS City Raikot Date 24.11.2023. Today at police station: At receipt of Ruqa at police station, FIR is registered against above mentioned accused under above mentioned sections. Original Ruqa alongwith copy of FIR is being sent by the hand of coming Ct. Varinderpal Singh 199 to ASI Ravinder Kumar at the spot. Special reports are being sent to Area Magistrate and senio officers by the hand of S/LC Sukhjeet Kaur 145. Intimation is being given at control room.

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 submits that as per the allegations, 160 intoxicant tablets were recovered from the petitioner whereas the alleged recovery has been planted upon the petitioner. He has argued that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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, 1 month and 9 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that as per FSL report, the loose tablets namely Etizolam and Tramadol Hydrochloride were recovered from the petitioner who had no licence to keep them but is however not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 1 month and 9 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 22.01.2024 charges stands framed on 03.02.2024 out of 10 prosecution witnesses, only one PW 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.

Further, the question can be raised on the version of the prosecution that the actual recovery of the contraband, if at all was effected, was alleged to have been recovered from the transparent bag which shows that the contraband was in fact not recovered from the physical possession of the petitioner.

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 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 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

07.01.2025
anuradha

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