



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

329

CRM-M-5351-2025
DATE OF DECISION: 17.03.2025

BOOTA SINGH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Divya Narula, Advocate for the petitioner(s).
(through Hybrid Mode).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS for grant of Regular bail to the petitioner in FIR No. 284, dated 12.09.2020 registered U/s 22C/61/85 of NDPS Act. 1985, at Police Station Ellenabad, Distt. Sirsa.

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

'The Incharge Officer, Police Station, Ellenabad, District Sirsa, Jai Hind. Today I the SI along with HC Surajpal No.854/Sirsa, Ct Jasbir Singh No.1426 along with personal laptop and printer in a private vehicle was present on canal bridge from village Behar Wala towards village Dhaulpalia for the purpose of controlling and checking crime. Then we saw two persons on a motorcycle being coming from the side of village Dhaulpalia, who on seeing the police party present ahead, got frustrated and started turning their motorcycle towards backside, but both the persons had fallen on the earth along with their motorcycle and the polythene carry bag of black colour kept in the portion between both the persons had torn and the strips of contraband/intoxicant tablets came out of the said carry bag and had fallen on the earth/ground and both the persons tried to fled



from there by leaving their motorcycle there. On this, I the SI with the help of accompanying police officials apprehended/caught hold both the persons and asked their names and addresses, on which the person driving the bike disclosed his name as Lal Chand S/o Raje Ram r/o Dhaulpalia and the pillion rider disclosed his name as Nirmal S/o Jagdish R/o Dhaulpalia. Then I the SI checked the carry bag, on which contraband capsules named PARAVORIN SPAS RIDLEY were recovered from the black coloured carry bag. On counting, 61 strips were found to be of BATCH NO.2019 and were total 610 capsules, 4 strips were found to be of BATCH NO.2020 and the total capsules were 40 in number and 55 strips were found to be of BATCH NO.2022 and the same were 550 capsules in number. As such total 120 strips were recovered containing 1200 capsules. By keeping the above mentioned recovered 120 strips, each strip containing 10 capsules, Le. total 1200 contraband capsules in the same polythene carry bag of black colour, its parcel made of cloth was prepared and the same was stamped/sealed with stamp/seal TC/3. As such the duly stamped/sealed parcel made of cloth containing recovered 120 strips having total 1200 capsules and motorcycle mark Platina bearing number HR-44K-4701 were taken in police possession/custody as an evidence/proof vide property seizure form. The accused Lal Chand and Nirmal and the witnesses had appended their respective signatures on the property seizure form. I the SI after using my stamp/seal, handed over the same to HC Suraj Pal No.854 being a sample seal. On interrogation by me the SI, the above mentioned accused Lal Chand and Nirmal disclosed that we purchased and brought these recovered contraband/intoxicant capsules from Kalu Ram of village Chahuwali Thekedar (contractor). The above mentioned accused Lal Chand and Nirmal by keeping contraband capsules in their possession have committed offence punishable under section 22C of NDPS Act. Thus, the present document is being sent through C Jasbir Singh No.1426 to the police station for registration of a case. After registration of a case, its number should be intimated and another investigation officer should be send on the spot for the purpose of further investigation. I the SI along with accompanying police officials and the above mentioned accused Lal Chand and Nirmal and case property am busy in waiting on the place of occurrence/spot. Today in the area of Dholpalia, Sd/- Tara Chand SI P.S. Ellenabad, dated 12.09.2020 at 8.50 PM.'



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 and has been nominated on the basis of the disclosure statement of co-accused. As per the allegations, 1200 Parvorin Spas Ridley capsules which were recovered from co-accused Lal Chand and Nirmal were purchased from the petitioner and they were granted concession of regular bail vide orders dated 23.08.2021 and 13.09.2021 passed in CRM-M-21529-2021 and CRM-M-36933-2021. She further submits that no recovery has been effected from the petitioner and even his name was not mentioned in the present FIR, 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 4 years and 30 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 other FIRs also but is 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. 4 years and 30 days, similarly situated co-accused has already been granted concession of bail by this Court, no recovery was effected from the



present petitioner 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 18.02.2021 charges stands framed on 10.08.2022 out of 12 prosecution witnesses, only 1 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.

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

17.03.2025

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*