



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63783-2024
DECIDED ON: 07.01.2025

KAMLA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Paras Jagga, Advocate for
Mr. Jagdish Singh Mahal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.0183, dated 07.10.2023, under Sections 21(b), 27(a) of NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Dinanagar, District Gurdaspur.

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

“SHO PS Dinanagar. Jai Hind. Today I SI alongwith ASI Naresh Kumar 562/G, ASI Rupinder Singh 693/G, ASI Satnam Singh 197/G, L/CT Rajwant Kaur 73/G, on private vehicle, were going towards village Jhandechak, Paniar, Gadhian etc. regarding patrolling and checking

of vehicles, when the police party while patrolling reached in the big street, at the western side of village Paniar then from the opposite side, from the small street of village Paniar, one lady was seen coming who on police party suddenly got perplexed and turned back in hurried manner who was apprehended with the help of colleagues on the basis of suspicion and enquired about the name and address who disclosed her name as Asha Rani w/o Bagga Ram r/o Shankar, PS Nakodar, Distt. Jalandhar presently village Paniar to whom I disclosed my name, rank and posting and issued notice u/s 50 of NDPS Act and said that I am having suspicion that you are having some intoxicant substance with you due to which your search is to be conducted but you are having legal right that you can get yourself search through some Magistrate or some Gazetted officer who can be called at the spot just now who said that she is having full faith on me. She wants to get herself through the lady employee present alongwith me. upon which, consent memo was prepared and before conducting the search, some public witness was tried to join into the police party but everyone disclosed their helplessness and did not become ready to join the police party. Upon which, I SI conducted the search of Asha Rani w/o Bagga r/o Shankar, PS Nakodar, Distt. Jalandhar presently r/o Village Paniar as per rules through lady employee Rajwant Kaur 73/G then from the polythene bag having in her right hand, rupees and one small transparent polythene bag containing heroin got recovered. That the recovered heroin was weighed by me on the computerized scale lying in my investigating kit/bag which on weighing, came to be 15 grams heroin alongwith polythene bag. Then the recovered heroin including transparent polythene bag put into a plastic box and

parcel was prepared. The parcel. was sealed by me with my seal DS/1 and the money lying in the abovesaid polythene bag took out and on counting, 4 notes of Rs.500 and 1 note of Rs.200 totaling to Rs.2200 Indian currency notes got recovered. That on asking about the above recovered notes, Asha Rani above disclosed that these have been collected by her after selling heroin. After preparing a separate parcel of above notes, I sealed the same with my seal DS/1 and took the abovesaid parcel of heroin into police possession vide separate memo. The sample seal was prepared separately. The seal after use, handed over to ASI Satnam Singh 197/G. Accused Asha Rani abovesaid has committed an offence u/s 21 (b) / 27(A)-61- 85 of NDPS Act after keeping in her possession 15 grams heroin including the small transparent polythene bag and Rs.2200 (Indian currency notes) drug money. Therefore, after writing the ruka, the same is being sent to the police station by hand through ASI Rupinder Singh 693/G for registration of FIR. After registering the case, number be intimated. Special reports be issued and be sent to the Illaga Magistrate and officers. Control room be informed through wireless. I SI busy in investigation at the spot.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused Asha Rani, from whose possession 15 grams of heroin and drug money of Rs.2200/- were recovered, which is non-commercial in nature. He further contends that nothing has been recovered

from the possession of the present petitioner and there is no evidence or cogent material to connect the petitioner with the said contraband.

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 urging that in the disclosure statement of co-accused Asha Rani, it has been categorically asserted that she purchased the alleged contraband i.e. 15 grams of heroin from the present petitioner only. He further submits that the petitioner is involved in other multiple cases of NDPS Act alone and therefore, being a habitual offender does not deserve the concession of regular bail at this stage.

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 months and 03 days for which the petitioner has suffered incarceration; nothing has been recovered from the possession of the present petitioner; recovered contraband i.e. 15 grams of heroin is admittedly non-commercial in nature and chances of false implication of the petitioner cannot be ruled out at this stage since there is no other connecting evidence put forth by the State against the present petitioner except disclosure statement of co-accused Asha Rani in addition to the fact that investigation is complete, challan stands presented to Court on 29.11.2024, charges are yet to be framed and total 15 prosecution witnesses have been cited, 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 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 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.

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 concession of bail.

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.

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

07.01.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No