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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62349-2024
DECIDED ON: 17.12.2024

MEHNDI HUSAIN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Simran, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the third time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.287, dated 18.05.2023, under Sections 22, 29 of the NDPS Act, registered at Police Station Mahesh Nagar, District Ambala, Haryana.

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

“The copy as follows: To the Officer, Police Station Mahesh Nagar, Jai hind Respected Sir, today dated 18-05-2023, I SI along with ESI Karambir Singh No. 1202/AMB, C. Narendra Kumar No. 1459, C. Satbir Singh No. 706, EHC Rajesh Kumar No. 727, C. Amarjeet Singh No. 969, Government vehicle HR68GV-5413 whose

driver is SPO Balwan Singh no. 95 Patrolling and investigation of crime with laptop and computer at around 06.15 PM, Anti Narcotic Cell Ambala went to Capital Chowk Ambala Cantt, via area police station Mahesh Nagar. At around 06.30 PM, we reached area police station Mahesh Nagar near Rama Petrol Pump was located nearby at Mahesh Nagar Ambala Cantt, that the informer informed Deputy Inspector. It was informed that Mehndi is a resident of Puja Vihar, Police Station Mahesh Nagar District Ambala, who has a gas stove repair shop by the name of Mehndi Hasan Repair House at Kardhan Road, Ambala Cantt and who has alot of intoxicant capsules in his inside the red and yellow flowered bag. There is a quantity of intoxicating capsules which he is trying to sell. This time he will come from the side of Kardhan Road towards the dam of Tangri River, if blockade is done on the nearby Tangri River Bridge, then Mehndi can be arrested along with the bag full of intoxicating capsules mentioned above, which is confirmed and reliable by the informer on which the situation is going on. An information letter about the whistleblower was sent to the SHO of the police station, Mahesh Nagar. Through C. Satbir Singh No. 706 police station Mahesh Nagar was sent and I sub-inspector prepared the notice under Section 42 NDPS ACT to inform Shri Rajneesh Kumar HPS/DSP Ambala Cantt about the situation. The detailed EHC was prepared separately and sent to Rajesh Kumar No. 727 at his office in Ambala Cantt and after that I SI tried to join the passers-by on the way about to join the investigation to informed about the raiding party, on which all the people went away by given their personal reason, on which I with the help of a fellow employee, along with the informant, reached the nearby Tangri river bridge and

started the blockade, where I again tried to join the investigation passers-by on the way about the situation and told them about the raiding party involved, on which all the people went away citing their legitimate reasons. After this, after some time, a person was seen coming from Kardhan Road Mahesh Nagar towards Tagri Dam with a red and yellow flowered bag in his right hand. With the help of a fellow employee, he overpowered him and asked for his name, who on enquiry, gave his name as Mehndi son of Itwari, resident of village Azampur, police station Dhanaura, district Amroha, Uttar Pradesh now tenant of Surendra Kumar Sarpanch, Puja Vihar, Police Station Mahesh Nagar District Ambala. After this, I told to Mehndi the above that I have the information that there are drug capsules in the bag held in your right hand and you have the legal right to get your bag searched by any magistrate or any gazetted officer, on which notice 50 NDPS ACT. It was prepared separately on which the person who arrested said that sir I does not know how to read and write, to whom the notice was read out and explained and accused Mehndi put his left thumb on the notice and the witness put his two signatures, in response to notice 50 NDPS ACT. Accused Mehndi gave oral consent to get her search conducted in front of a Gazetted Officer and Fard Consent was prepared separately by I SI. On the Fard Consent of Mehndi put her left hand thumb and the witness put his two signatures. After this, I, through its mobile phone number 8901461691, informed about the cases of NDPS Act by the government nominated gazetted officer Sh. Subash Chander, Superintendent, 0/o Jiont Director, District Industries Centre, Ambala, mobile phone number 9813374784 time 07.30 PM. But after explaining the situation to him, he was advised to reach at the spot.

After some time, Sh. Subash Chander came at the spot on his private vehicle, to whom I SI explained the situation till now and presented before him the notice under Section 50 NDPS ACT, Fard Consent or Accused Mehndi mentioned above. Sh. Subash Chander seen the above said notice under section 50 NDPS ACT and further consent and Sh. Subash Chander in relation to the informant, did searched body be carried out as per law or I SI was conducted the personal search as per the instructions of Subash Chander, fellow employee ESI Karambir Singh no. 1202/AMB, SI. Narendra Kumar No. 1459, C. Amarjeet Singh No. 969 and driver SPO Balwan Singh no. 95. The search of persons was carried out as per law. Apart from the items, no objectionable thing was recovered from accused, on which Sh. Subash Chander was separately prepared the Fard Jama Taalshi Adam Seizure was prepared separately on which the witnesses put their signatures. Thereafter the Sh. Subash Chander told that I am Subash Chander, Superintendent, O/o Joint Director, District Industries Centre, Ambala, Gazetted Officer nominated by the Government under NDPS Act and Sh. Subash Chander informed me that accused Mehndi was instructed to search the bag handed in the right hand of the above mentioned person in front of him, on which I Searched the bag, The procedure was carried out as per the procedure and on checking the bag handed in the right hand of the person named accused Mehndi, 15 box capsules of intoxicant were found inside it (30 leaves per box and 8 capsules per strip), total 240 intoxicant Capsules), Total 3600 intoxicant Capsules mark NRx Paracetamol, Dicyclomine Hydrochloride Tramadol Hydrochloride Capsules PROXYWEL SPAS [B.NO.](#) PCCIH280 Mfg. Date 06/2022, Expiry Date 05/2024 have been recovered, which when weighed with

the fork brought with them, contained & capsules of PROXYWEL SPAS in one strip (strip), whose weight with the leaf was 5.70 grams or without the strip (strip) the weight of PROXYWEL SPAS was 4.35 grams or the weight of the strip was 1.36 grams, the weight of one capsule of PROXYWEL SPAS was 0.55 grams, thus the total weight of 3600 capsules without strips was 1980 grams, which is about recovered Capsules. Opinion is to be taken from Drugs Controller Officer Ambala, but due to the illness of Drug Controller Officer Ambala, I SI has written a separate application to seek opinion about the recovered intoxicating capsules and photographs of the address of the intoxicating capsules, sent to the office mail ID ancambala2020@. Mail ID of Drugs Controller Officer Panchkula from [gmail.com](mailto:deopanchkula@gmail.com). Photographs sent to the address of Veranda intoxicating capsules were sent to deopanchkula@gmail.com and capsules in his possession without license or permit. On which the Si wrote an article and got the case registered against constable Amarjeet Singh no. Arsal police station is 969, after filing the case, the number mentioned in the case should be informed to the case officer on the spot and the special report of the case should be sent to the service of Officer. Officer should be informed about the situation and as per the order of the Honorable Supreme Court, the in-charge Anti Narcotic Cell Ambala was informed about sending the second investigation officer to the spot. I get busy in investigating every now and then.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, alleged contraband i.e. 3600 capsules of Nrx Paracetamol

Dicyclomine Hydrochloride Tramadol Hydrochloride Capsules total weight 1980 grams was recovered from the present petitioner. She further contends that the petitioner has been falsely implicated in the present case as nothing has been recovered from the present petitioner. It has been contended on behalf of the petitioner that he is in custody since 18.05.2023 and challan stands presented to Court on 14.07.2023. She further asserts that the petitioner is a man of clean antecedents as he is not involved in any other case.

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 on the ground that recovered contraband is commercial in nature.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 06 months and 27 days for which the petitioner has suffered sufficient incarceration and also the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 14.07.2023, charges have been framed on 16.01.2024 and out of total 26 prosecution witnesses, only 01 witness 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 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.

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.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No