

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No. 12708 of 2023 (O&M)
Date of decision : 28.03.2023**

Vikas @ Dhillu

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Satbir Singh Kanwar, Advocate
for the petitioner.

Mr. Ayuwan Singh, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1 This second petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.54 dated 24.02.2021 registered under Section 20 of the NDPS Act at Police Station Beri, District Jhajjar.

2 Learned counsel for the petitioner has referred to statement made by PW/4 (Duty Magistrate)-the gazetted officer in whose presence the search was effectuated to submit that in these circumstances it is evident that it is a case of false implication and the petitioner cannot be held guilty. The petitioner has been in custody since 24.02.2021 i.e. for more than 2 years.

3 Status report by way of affidavit of Naresh Kumar, HPS, Deputy Superintendent of Police, Beri, District Jhajjar on behalf of respondent/State has been filed, wherein it is not denied that the gazetted officer in his testimony has specifically denied that he was called on the

spot for the purpose of compliance of Section 50 of the NDPS Act.

4 In order to appreciate the argument raised at the behest of learned counsel for the petitioner, it is necessary to peruse testimony of PW/4-Gazetted officer which reads as under :-

*“PW-4 Naveen, Sub Divisional Engineer, Public Health, Beri.
Time : 11:20 AM to 12:00 Noon
This deposition of the witness has been recorded by me (Jyoti Lamba, ASJ, Jhajjar), on 18.02.2022 as under :-*

On SA.....

Stated that 24.02.2021, I was posted as above. On that day, at about 9.30 PM, I received a telephonic call from ASI Ajeet that he had met with some suspects relating to drugs at Bishan Mod, Ritoli Road, Beri. I reached at the spot within five minutes. I have checked about the notice under Section 50 NDPS Act. Notices Ex. PW1/B. Ex. PW1/C and Ex. PW1/D were signed by me. I also checked their agreed statement Ex. PW1/E, Ex. PW1/F and Ex. PW1/G. I signed the same. I directed to ASI Ajeet for his personal search in my presence. After search, nothing was recovered from ASI Ajeet. I signed memo Ex. PW1/H. Thereafter, I directed ASI Ajeet to conduct the search of three accused persons present on the spot. After search, five packets (three were of white colour and two of black colour) were recovered from the dash-board of the car. These packets contained charas like material. It was weighted in my presence. After weighing, the same was of 2 kg 638 grams. Thereafter, the same was converted into a sealed parcel, affixing of seal of KK and taken into possession vide memo Ex. PW1/E, in my presence. The same was signed by me. Accused persons present in the Court, today.

Xxxxxxxxxxxxxx by Sh. A.S. Kadian, Ld. Counsel for accused Mintu, Sh. Mukesh Kashyap, Ld. Counsel for accused Vikas, son of Mahender Singh and Sh. Pawan Jakhar, Ld. Counsel for accused Vikas @ Dhillu.

I do not know the mobile number of ASI Ajeet Singh. Thereafter, I reached at the spot in my personal vehicle bearing registration no. HR-16J-2223. The distance between my office (residence) and the place of occurrence is near about 5/7 kilometers. This is my first case as Duty Magistrate. It is correct that accused replied that they want to search before a Magistrate. It is correct that I am not a Magistrate. I was a Duty Magistrate on that date, so I was competent to participate in the recovery proceedings. Hence, I did not refuse to participate in the

recovery proceedings to the IO. I have some knowledge of NDPS Act. Section 50 of NDPS Act is about the checking of the accused persons. I have no knowledge regarding Section 51 NDPS Act. It is correct that all the six documents bearing Ex. PW1/B to Ex. PW1/G were mentioned to be under Section 50 of the NDPS Act. I directed ASI Ajeet for his personal search at about 9.40 PM. It is correct that nothing was recovered from the personal search of all the accused. It was recovered from the vehicle. That some recoveries of currency notes was effected from all the accused. I cannot recall what amount of currency notes were recovered from each. The said currency notes were not taken into possession by ASI Ajeet. I cannot recall the number of seals of 'KK' affixed on the parcels of contraband. It is correct that recovery memo Ex. PW1/I was computerized typed and other documents Ex. PW1/B to Ex. PW1/G were hand-written of ASI Ajeet Singh. Recovery memo Ex. PW1/I was prepared while sitting at the police station, Beri. It is correct that quantity of charas was not mentioned in recovery memo Ex. PW1/I. It is correct that in Ex. PW1/I FIR No. 54 dated 24.02.2021 under Section 20 of the NDPS Act, P.S. Beri is written. It is correct that witnesses, accused persons and myself signed the recovery memo Ex. PW1/I at the Police Station. It is correct that the aforesaid recovery memo is not bearing the seals of 'AS' and 'KK'. I have no idea about CFSL Form if any prepared at the spot by the IO-ASI Ajeet. It is correct that investigating Officer ASI Ajeet had not written in Tehrir Ex. PW1/J regarding CFSL Form was prepared at the spot. I left the spot at about 10.00/10.20 PM. IO ASI Ajeet Singh recorded my statement under Section 161 Cr.P.C. on the same day at the spot. It is correct that no such statement under Section 161 Cr.P.C. is on the Court file, as well as on the police file. It is correct that may be my statement under Section 161 Cr.P.C. was not recorded by ASI Ajeet. No statement under Section 161 Cr.P.C. of PW HC Krishan, Ct. Anil was recorded in my presence. It is correct that I have not met any Investigating Officer of this case after leaving the spot. It is correct that Tehrir Ex. PW1/J was taken to Police Station, Beri by ASI Ajeet for registration of FIR. I do not know whether ASI Ajeet Singh returned to the Spot or not. Electronic weighing machine of Cream Colour was already with the police official. Some vehicles were also passing by the place of recovery. No vehicles were stopped by the IO for joining the public witnesses in this case. It is wrong to suggest that nothing has been recovered from the vehicle and the said Charas was planted upon the accused persons while sitting in the police station. It is wrong to suggest that I am not a Magistrate and also false proceedings

were conducted on the asking of ASI Ajit Singh. It is wrong to suggest that I am deposing falsely.”

5 From analysis thereof, it is evident that he is clear in his testimony to submit that nothing was recovered from the personal search of the accused. It has been further admitted by him that the recovery memo ex. PW1/I was computerized type. Recovery memo ex. PW1/I was prepared while sitting at the police station and the quantity of the contraband was not mentioned in recovery memo ex. PW1/I. It has been further admitted by him that on ex. PW1/I which is the most material document FIR number and the provision of the NDPS Act was already written.

6 Still further learned counsel for the petitioner argues that the petitioner has already undergone incarceration of more than two years. Trial is already in the midst. Only independent witness PW-4 has put whole of prosecution story in dock. The petitioner has no other criminal antecedents with respect to involvement in offences under the NDPS Act. False implication against the petitioner goes to the root of the case.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 The issue of details of FIR already mentioned on the recovery memo came for consideration before Division Bench of this Court in the case of ***Didar Singh @ Dara Vs. The State of Punjab, 2010 (3) RCR Criminal 337*** wherein Division Bench held as under :-

“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR

No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In Ajay Malik & Ors. v. State of U.T., Chandigarh, 2009(3) RCR (Criminal) 649, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e., either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.”

9 Coordinate Bench of this Court in **CRM-M-10343 of 2021** titled as **Ajay Kumar @ Nannu Vs. State of Punjab and other connected matters**, in order dated 31.03.2021 held as under :-

“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H); where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M- 44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRAS2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019;

CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs.State of Punjab' decided on 16.08.2019; CRM-M36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs.State of Punjab' decided on 28.01.2021 and Mustkeem@ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/suspension of sentence was allowed on this ground.

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16. In Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769 it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H) it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H) and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212- SB-2016 titled as 'Kashmir Singh @ Koki Vs.State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-6504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs.State of Punjab' decided on 28.01.2021 and Mustkeem@ Sirajudeen Vs. State of Rajasthan (SC): 2011(3)RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

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20. In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

10 In the present case the most material witness i.e. the gazetted officer who is stated to be witness to whole of the recovery in his testimony has admitted certain facts which put whole of the prosecution under reasonable doubt.

11 In the case of **Shariful Islam @ Sarif vs. The State of West Bengal** passed in **Special Leave to Appeal (Crl.) No.4173 of 2022** decided on 4th of August, 2022, Apex Court found that an under-trial having suffered incarceration over 1 year and 6 months is entitled for grant of regular bail holding that :-

“2. Taking into consideration the fact that the petitioner is reported to be in custody since 27-1-2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.”

12 Similarly, the Supreme Court in **Gopal Krishna Patra @ Gopalrusma Vs. Union of India** passed in **Criminal Appeal No.1169 of 2022** decided on 5th of August, 2022 ordered as under :-

“The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.

02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 19851.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned. Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.”

13 The Supreme Court in **Chitta Biswas @ Subhas vs. The State of West Bengal** passed in **Criminal Appeal No(s).245/2020** decided on 7th of February, 2020 ordered as under :-

“The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is

made out.”

14 The Supreme Court in another case titled as **Mohammad Salman Hanif vs. The State of Gujrat, Special Leave to Appeal (Crl.) No(s).5530/2022** decided on 22nd of August, 2022 ordered as under :-

“The petitioner seeks enlargement on regular bail in the case FIR being C.R.No.NDPS/11192015200884/2020 registered at Changodar Police Station, District Ahmedabad (Rural) for the offences punishable under Sections 8(c), 21(c) and 29 of the NDPS Act.

As per the allegations, 358 bottles of cough syrup containing codein of 'commercial quantity' was recovered from the petitioner.

We have heard learned counsels for the parties and are of the considered opinion that the questions like whether the contraband recovered from the petitioner is of 'commercial quantity' or whether codein phosphate is a manufactured drug or a narcotic substance, need not be go into at this stage.

We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.”

15 Division Bench of this Court in **Bhupender Singh vs. Narcotic Control Bureau, (2022) 2 RCR (Criminal) 706** after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors

enumerated under Section 37 of the Act held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India de hors the stringent provisions of Section 37 of the Act.

16 Right to speedy trial is one of the objectives of NDPS Act and is rather one of the checks and balances provided under the Act. Section 36 NDPS Act recognizes the need for speedy trial. The provision contained in Section 36 providing for constitution of Special Courts is a means to achieve the end objective of speedy trial. Section 36 well recognizes the need for speedy trial. It is only with an objective to synthesize the right to speedy trial and rigors of Section 37 that the Supreme Court in the afore-referred cases granted concession of regular bail to the under-trials solely on the basis of long incarceration that they have suffered owing to delay in trial.

17 Keeping in view the aforesaid facts and circumstances of the present case, the instant petition deserves to be allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*

- (iv) *The petitioner shall not commit any offence similar to the one alleged in the present case.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

18 In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

19 Ordered accordingly.

20 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

28.03.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No