

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19775-2019 (O&M)
Reserved on: 15.03.2023
Pronounced on: 12.04.2023

Amit Gupta
... Petitioner(s)
Versus
State of Haryana
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present:- Mr. Akash Manocha, Advocate and
Mr. G.B. Gilhotra, Advocate
for the petitioner(s).
Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
14	22.01.2019	Saha, District Ambala	21(c), 22(c) and 29 NDPS Act

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of possessing massive number of vials containing buprenorphine and other substances, which are times above the commercial quantity, had come up before this Court way back in April 2019 under Section 439 CrPC seeking bail.
2. In paragraph 13 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	32	19.1.2019	21(c) and 22(c) NDPS Act	Baldev Nagar, Ambala

3. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category, and given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

6. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

7. Based on a prior secret information, the police had allegedly recovered a massive quantity of prohibited substances from the petitioner's possession. The recovery was also of 400 injections of Bupine, which had buprenorphine in it and the FSL report dated 20-06-2019 confirmed the substance and the quantity is much more than the commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. Petitioner claims false implication and claims bail. It is appropriate to reproduce paragraphs 3 (extract), 4, 5, & 6 of the bail petition which reads as follows:

“3. That the petitioner is deprived of his liberty and is behind the bars since 21-01-2019 on the basis of registration of a false criminal case and the challan had already been presented by the police on 20-03-2019. That the petitioner has been falsely implicated by the Ambala Police and falsely shown his arrest from Anaj Mandi Gate, Saha at 10:30 PM on 21-01-2019, whereas at 12 O'clock on 21-01-2019 one person wearing the Turban (i.e SI Sardar Balwinder Singh) has demanded a ransom of Rs. 05 lacs from the father of the petitioner namely Ashok Kumar Gupta in the name of Amit Gupta (i.e. petitioner) and ask to intimate on Mobile No. 8607688000. That later on the family of the petitioner came to know that the person who was wearing the Turban was one SI Sardar Balwinder Singh who in connivance with the other Police Officials of Ambala Police has demanded the ransom and on non- payment of the same, the petitioner has been forcibly picked up from the Saharanpur and the Ambala Police concocted the false story and false recovery of 400 Injections of BUPINE is carrying 2 ml liquid total

consisting 800 ml and 100 Injections of REXOGESIC each carrying 2 ml liquid total consisting 200 ml and 400 Injections of AVIL each consisting 10 ml of liquid total consisting 4000 ml.....”

4. That the petitioner has been forcibly picked up from the Saharanpur (UP) at 2:30 PM on 21-01-2019 and illegally shown his arrest at 10:30 PM from Grain Market, Saha, Ambala. The brother of the petitioner namely Anuj Kumar Gupta son of Sh. Ashok made a written complaint to the Police of Saharanpur and same was duly received by the police and in the complaint it was specifically mentioned that around 12:00 O'clock he received the message from his father that one person wearing Turban is demanding Rs. 05 lacs ransom and non-payment of the same he has threatened to face the consequences and asked to intimate the same on Mobile No. 8607688000, which they later on came to know that the said Mobile Number belongs to SI Sardar Balwinder Singh of CIA Staff, Ambala. The copy of the complaint dated 21-01-2019 is annexed as Annexure P-2 with this petition.

5. That the news of the kidnapping of the petitioner was also spread in the area and the family of the petitioner also rang up at Phone No. 100 for local police help, but the local police after reaching on the spot did not take any action. The said news of kidnapping was also published on the next day (i.e. 22-01-2019) in the local newspapers in Saharanpur namely Amar Ujala, Saharanpur and Saharanpur Jagran. So, the arrest from the Grain Market Saha is totally false and the recovery is also planted one by the police.

6. That when the local police did not take any action, then the family of the petitioner gave complaint on the Chief Minister UP, Complaint Portal regarding the inaction of the local police and on that the police enquired the matter and gave report that the brother of the petitioner was kidnapped by the Ambala Police without informing the local Police of Saharanpur. The details of the police report is as follows:

Conclusion of Inquiry Report

"On the above incident, keeping in view the whole facts, the brother of the applicant Amit Gupta was kidnapped by unknown persons at 14:30 PM on 21-01-2019 from the Kishanpura Police Station Area Saharanpur. On information, the Inspector Incharge of the Kotwali Nagar reached on the spot and during inquiry it came in the knowledge that the brother of the applicant was kidnapped by the Ambala Police from Kishanpura Police Station Area Kotwali Nagar Saharanpur, the same was also verified by the Dainik Newspapers Reports. The police officers of the Ambala Police did not give any information to the Police Station Kotwali Nagar and applicant Anuj Gupta also did not give any written complaint. Regarding the said incident, and about the facts of kidnapping, the Ambala Police only can explain".

Bare perusal of the inquiry conducted by the UP Police, it shows that the petitioner has been kidnapped by the Ambala Police from Saharanpur at 2:30 PM on 21-01-2019, but illegally shown his arrest from Grain Market, Saha at 10:30 PM on 21-01-2019 and falsely shown the recovery from him from Grain Market, Saha.”

9. It would be relevant to extract the relevant paragraphs 2 to 10 of affidavit dated 25-10-2019, which reads as follows:

- “2. That the present petition came up on hearing on 25.09.2019 before this Hon'ble Court and pleased to pass the following orders and adjourned to 01.11.2019 for filing of the requisite information:-

"A reply by way of an affidavit of Sh. Raj Singh, Deputy Superintendent of Police (Barara), District Ambala, has been filed, which is ordered to be taken on record. As a counter to that affidavit, this application has been filed (CRM-29435-2019), by the applicant-petitioner, seeking to place on record his replication, along with copies of documents by way of Annexures P-6 and P-7, the first of which is seen to be an order of the learned Judicial Magistrate 1st Class, dated 17.07.2019, the 2nd being a copy of FIR number 0312, dated 03.09.2019, registered at Police Station Kotwali Nagar, Saharanpur (U.P), at the instance of one Anuj Gupta (who is stated to be the brother of the petitioner), alleging therein that the petitioner was "possibly kidnapped from a place called Kishanpura" (stated to be in District Saharanpur), at around 02:30 p.m. on 21.01.2019 and taken away Innova car, with the location of the phone number 9761993392 (stated to be belonging to NOAR the petitioner), found to be switched off at 03:00 p.m. in Advocate Rego No. 3.30/ AMB LA OF Pilkhani (also stated to be in U.P.). It has been further stated that one Sh. Avtar Singh Miglani spoke from his mobile phone number 9410006106 on phone no. 0171- 2530344, and was informed by one person who disclosed his name as Karamvir, that the petitioner had been arrested. However, the arrest is actually shown to be of 10:00 p.m., by the police of Police Station Saha, District Ambala. The allegation is that the aforesaid Balwinder Singh (actually stated to be an ASI in the CIA Staff Ambala), was the one who had demanded a ransom of Rs. 5,00,000/- and upon that not being paid, the petitioner was picked up from Saharanpur and taken into Police Station Saha. Without making any comment at all at this stage, on whether any ransom was demanded or not by the aforesaid person, since the specific allegation is that the petitioner was not arrested in District Ambala but was actually picked up from Saharanpur about seven hours earlier, the Superintendent of Police, Ambala, is directed to file an affidavit, giving therein the location of the mobile phone number of ASI Balwinder Singh, as also the entire police party that is stated to have arrested the petitioner, for the period 21.01.2019 to 22.01.2019 (both days inclusive), after also obtaining the call details records of the petitioner. Adjourned to IAR have been registered actually on the directions of the JMIC, 01.11.2019. In the meanwhile, since an FIR is stated to JASPAI Rego No. 339 AMB LA aharanpur, again without making any comment on the OF merits of the case for or against the petitioner (as regards the FIR registered against him), the petitioner is ordered to be admitted to interim bail to the satisfaction of the trial Court, till the next date of hearing before this Court. If the affidavit of the Superintendent of Police, Ambala, is not filed by the next date of hearing, he shall remain personally present in Court on that date itself. A copy of the replication filed by learned counsel for the petitioner today be given to learned State counsel during the course of the day. A copy of this order be given to learned State counsel under the signatures of the Bench Secretary of this Court."

3. That in compliance with the orders of this Hon'ble Court, on 05.10.2019 vide memo No. 11821/Reader dated 05.10.2019, In-charge, Cyber Cell,

Ambala was directed to provide the call detail record of SI Naresh Kumar No. 51/A (Mob No. 98962-60035), ASI Balwinder Singh No. 37/AMB (86076-88000), EASI Jangsher Singh No. 1280/AMB (94161-91984), HC Rajeev Mohan, No. 1224/AMB (94166- 65980) and EHC Bahadur Singh No. 1222/AMB (98966- 35812) and that of petitioner's mobile (97619-93392).

4. That after getting the call detail record from the concerned Mobile Companies, on 15.10.2019, In-Charge, Cyber Cell; Ambala sent his report to the deponent. The report of In- charge, Cyber Cell, Ambala dated 24.10.2019 is attached as Annexure R-1 and true translation is Annexure R-1/T.
5. That on examination of the call details of the above named police officials; it is revealed that none of the police official visited in the area of Kishanpura (Distt. Saharanpur) during the period 21.01.2019 to 22.01.2019, rather as per call detail record (CDR) of mobile No. 98962-60035 of SI Naresh Kumar No. 51/A, he was present in the area of Sector-10, Inder Nagar, Jagadhri Gate, Manav Chowk, Sector-9, Saha, Rattan Garh, Model Town, Prem Nagar, Court Road, Ambala City, Shahabad, Pipli and Kishangarh (Distt. KKR).
6. That as per call detail record (CDR) of mobile No86076- 88000 of ASI Balwinder Singh No. 37/AMB, during the period 21.01.2019 to 22.01.2019, he was present in the area of Naraingarh, Sector-7, Sector-10, Manav Chowk, Sector-9, Jandli, Saha, Shahzadpur House, Ambala City.
7. That as per call detail record (CDR) of mobile No94161- 91984 of EASI Jangsher Singh No. 1280/AMB, during the period 21.01.2019 to 22.01.2019, he was present in the area of Hari Palce, Manmohan Nagar, Kakru, RLU Hisar Road, Ambala City, Sector-7, Manav Chowk, Sector-9, Saha, Jasmit Nagar, Arya Chowk, Ranjit Nagar, Hotel Amar Palace, Hotel Grand, Ambala City.
8. That as per call detail record (CDR) of mobile No94166- 65980 of HC Rajeev Mohan No. 1224/AMB, during the period 21.01.2019 to 22.01.2019, he was present in the area of Manji Shahib, Hari Palace, Lal Kurti, RLU Hisar Road, Ambala City, Manav Chowk, Sector-9, Jasmit Nagar, Arya Chowk, INDIA Hotel Amar Palace, Kaziwada, Jalbehra Road, Ambala City.
9. That as per call detail record (CDR) of mobile No. 98966- 35812 of EHC Bahadur Singh No. 1222/AMB, during the period 21.01.2019 to 22.01.2019, he was present in the area of Sector-7, Sector-9, Sector-10 Ambala City, Shastri Colony Ambala Cantt and District Kurukshetra.
10. That the call detail record of mobile No97619-93392 belonging to the petitioner has also been obtained by the In- charge, Cyber Cell, District, Ambala from 21.01.2019 to 22.01.2019 and from the perusal of the CDR it has revealed that last call on the mobile phone of the petitioner was received from a mobile No. 80772-42404 at about 14:18 Hrs in the area of Saharanpur (Uttar Pradesh) and thereafter no record of call i.e. incoming or outgoing is found to be received or made upto 23:59:59 on 22.01.2019.

10. A perusal of the reply does not entitle the petition any bail and he has failed to satisfy the rigors of section 37 of NDPS Act. Any further discussions might seriously prejudice the petitioner's case and this court refrains from doing so.

11. The petitioner has criminal history, and thus, he is not entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Given the criminal antecedents, the stand that the accused is in custody for

sufficient time is also not a legal ground to overcome the rigors of S. 37 of the NDPS Act at this stage.

12. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in terms mentioned above. All pending applications, if any, stand disposed of. However, considering the petitioner's custody, the ends of justice will meet by expediting the trial. This court requests the concerned trial court to take up this trial on top priority and endeavor to conclude it by May 31, 2023. All the prosecution witnesses are directed to remain present for their depositions before the trial court and the State shall not seek any adjournment. The expediting of the trial is subject to the condition that the petitioner shall not seek any adjournment, and if he does so, this order expediting the trial shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court. **If the trial is not concluded by May 31, 2023, and the delay is not attributed to the petitioner, then the petitioner may file a bail before the trial court on the grounds of prolonged incarceration and delay in trial, and on these grounds alone, the trial court shall consider releasing the petitioner on bail and shall not be influenced by any previous order of rejection passed by this court of the trial court. The trial court shall decide such bail application expeditiously.** *Registry and State to communicate this order to the concerned Sessions Judge for compliance.*

(ANOOP CHITKARA)
JUDGE

April 12, 2023
Sonia arora

Whether speaking/reasoned	:	Yes
Whether reportable	:	No