

2024:PHHC:167043



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.211

CRM-M-10912-2023 (O&M)
Date of decision : 13.12.2024

Dinesh Kumar

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. N.K. Ganga, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

KIRTI SINGH, J. (Oral)CRM-48903-2024

1 This application has been filed for placing on record the copy of the judgment of acquittal passed by the learned Addl. Sessions Judge, Sirsa in case FIR No.44/2012 as Annexure P6 for proper adjudication of the case.

2 The application is allowed as prayed for.

Main case

3 The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.125 dated 11.06.2020, under Sections 17/27-A/61/85 of NDPS Act, 1985, registered at Police Station Nathusari Chopta, District Sirsa.

4. The translated version of the FIR is reproduced below:-

“To SHO, PS Nathu Sari Chopta. Jai Hind. Today I SI present with ASI then a secret information was received from CIA Staff, Sirsa that Dinesh Kumar S/o Mangi Lal R/o Ward No.

2024:PHHC:167043



6, Mandir Chowk Turkia, Distt. Mansaur, M.P. is doing the work of supply of opium and today in his vehicle no. MP-14CB 3749 mark Ertiga white colouris coming from Mansaur with opium for supply to Chopta. Further, if nakabandhi is laid on the fefana Road, Seme nala, then he can be apprehended with opium. The information was true and believable and notice u/s 42 of NDPS Act was written and sent to Sj. Jagdish Kumar Khajla, D.S.P, Ellanabad through EHC Hansraj 982. Then I laid a nakabandhi at fefana Road near Semnala, village Jamal with HC Sandeep Kumar 772, HC Vinod Kumar 1207, CT Sunil Kumar 896, Const. Sunil Kumar 976 alongwith a laptop and a printer ingovt vehicle no. HR 24X 4306 which was driven by EHC Harish Kumar 480. The nakabandhi was started and fefana Road. After sometime a white colour car no. MP-14CB 3749 was seen coming from nohar side. Then I SI gave a signal to stop the car. The driver tried to turn back his vehicle to Nohar side. Then the govt. vehiclewas used to block his vehicle. After overpowering him he was asked his name to which he disclosed his name as Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. Then upon checking the car it was found to be vehicle no. MP-14CB 3749 mark Ertiga white colour. Then I SI upon having a narcotic substance in the possession of driver namely Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. gave a notice of search under Section 50 of NDPS Actthat SI Satbir Singh 488/Sirsa is posted at CIA Staff and that you namely Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. do hereby inform you vide this notice that I have a suspicion that you and your vehicle no. MP- 14CB 3749 mark Ertiga white colour contains some narcotic substance and for this purpose you and your vehicle is required tobe searched. You have a legal right to get yourself and your car searched from a Gazetted officer or

2024:PHHC:167043



Magistrate whom can be called at the spot or you along with your car can be produced before them. In written reply to notice under Section 50 of NDPS Act the driver namely Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. got written that he Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. has understood the notice served by me and that he wants the search of himself and of his car bearing no. MP-14CB 3749 mark Ertiga white colour from some Gazetted Officer. For this purpose some Gazetted Officer may be called at the spot. After printing the notice and its reply the same was signed by accused Dinesh Kumar and attested by witnesses. Then ISI from my personal mobile number called Sh. Jagdish Kumar Kajla, D.S.P. Ellanabad on his mobile no. 88140-11604 and apprised him of the facts with a request to reach at the spot at around 1:00 PM. Thereafter Sh. Jagdish Kumar Kajla, D.S.P. Ellanabad reached at the spot along with his staff in his govt. vehicle at around 1:40 PM. I tried to associate independent witnesses by stopping 4-5 persons but all of them conveyed their inability to become witnesses. As per the instructions given by Sh. Jagdish Kumar Kajla, D.S.P., Ellanabad I SI searched the body of Dinesh Kumar S/o Mangi Lal R/o Ward No. 6, Mandir Chowk Turkia, Distt. Mansaur, M.P. from whom no narcotic was recovered and thereafter I searched his car bearing no. MP-14CB 3749 mark Ertiga white colour then below the driver seat of the car 2 polythene bags were found lying and after opening their mouths it was found containing opium. The recovered opium was weighted on a computerized weighting scale wherein weight of 1 polythene bag was 5 kgs and weight of 2nd polythene bag was 6 kgs. Thus total 11 kgs opium was recovered. The recovered opium were separately out in plastic boxes and parcel was prepared which was sealed with seal SS and DSP put his seal as JK. The sealed parcels and

2024:PHHC:167043



car bearing no. MP-14CB 3749 mark Ertiga white colour alongwith RC was taken into possession vide separate recovery memo which was signed by accused and attested by witnesses and verified by D.S.P. Seal after use was handed over to HC Sandeep Kumar 772 and seal of DSP was retained by himself. Accused Dinesh kumar upon asking told that he has purchased this opium from Samart S/o Ramlal Dhangar R/o Dobra, P.S. Narayangarh, Distt. Mandaur, MP and further disclosed that he was going to sell this to Jaibir S/o Sahab Singh R/o Dabra Kalan. Thus accused Dinesh Kumar by keeping in possession 11 Kgs opium has committed an offence under Section 17/27A/61/85 of NDPS Act. The ruqa was prepared and same was sent through Const. Sunil Kumar 898 in P.S Kotbhai for registration of FIR. After registration of FIR, no. to be informed at the spot. Special report is to be prepared and sent. I SI is present at the spot for investigation. Today at Bahad rakba, Village Jamal, Fefan road, semnala. Sd/- SI Satbir Singh 488/Sirsa CIA Sirsa dated 11.06.2020 at 3:00 PM.”

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and he is a man of clean antecedents. The petitioner has undergone an actual custody of 02 years, 09 months and 03 days and there is no other criminal case pending against him.

6. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 02 years, 09 months and 03 days and it is not disputed that there is no other criminal case pending against him. He on instructions submits that charges were framed on 21.09.2021 and out of total 27 prosecution witnesses, 05

2024:PHHC:167043



witnesses have been examined. He further submits that there is a recovery of 11 kgs. of opium from the petitioner and in view of strict rigors of Section 37 of the NDPS Act and serious allegations against the petitioner, he is not entitled to the concession of regular bail.

7. Counsel for the petitioner further places reliance upon **Rabi Prakash Vs. The State of Odisha** passed in **Special Leave to Appeal (Crl.) No(s). 4169 of 2023** decided on 13.07.2023 wherein it has been held as under :-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

8. Heard the rival submissions made by learned counsel for the parties.

9. Earlier to **Rabi Prakash's case supra** also Apex Court has consistently held that the prolonged incarceration has to be considered de hors bar contained under Section 37 of the NDPS Act. The Supreme Court in order dated 22.08.2022 passed by the Supreme Court in **Special Leave to Appeal (Crl.) No.5530-2022** titled as "**Mohammad Salman Hanif Shaikh**

2024:PHHC:167043



"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.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

10. In **Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023**, held as under:-

"1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. Each) of phensedyl were recovered from the joint possession of the petitioners. They were arrested on the spot and have been in custody for more than one year and four months.

3. We have heard learned counsel for the parties and carefully perused the record.

2024:PHHC:167043



4. *The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.*

5. *In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.*

6. *Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.*

7. *The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.*

8. *The Special Leave Petition stands disposed of in the above terms.*

9. *As a result, pending interlocutory application also stands disposed of.*

11. In order dated 05.08.2022 passed by the Supreme Court in **Criminal Appeal No.1169 of 2022 titled as "Gopal Krishna Patra @ Gopalrusma Vs. Union of India"**, the Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with

2024:PHHC:167043



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, 1985.

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.

We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

12. In order dated 01.08.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No.5769/2022 titled as "**Nitish Adhikary @ Bapan Vs. The State of West Bengal**" Supreme Court has observed as under:-

"As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the

2024:PHHC:167043



NDPS Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforestated terms.

Pending application(s), if any, shall stand disposed of."

13. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, petitioner has undergone an actual custody of 02 years, 09 months and 03 days and there is no other case pending against him. The investigation is complete. Charges were framed on 21.09.2021 and out of total 27 prosecution witnesses, 05 witnesses have been examined. Therefore, further incarceration of the petitioner will not serve any purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in **"Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22"**.

2024:PHHC:167043



14. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

15. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

2024:PHHC:167043



16. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
17. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

13.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No