



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-11094-2024 (O&M)
DATE OF DECISION: 29.08.2024

RIYAJ ALIAS RIYAJ AHMED

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Jagjot Singh, Advocate and
Mr. Kunal Dawar, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession of regular bail for the petitioner in FIR No.40 dated 18.01.2023, under Sections 21(C) and 61 of the The Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Camp Palwal, District Palwal, Haryana.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

*'To, The SHO, Police Station Camp Palwal. Jai Hind'.
Today on dated 18.01.2023 I/SI Kimti Lal No. 1862/FBD along
with fellow employees cm Deepak No. 5/699 HAP, CT Gaurav No.
4747 HAP, CT Rohit No. 2287/FBD on Government Vehicle No.
HR-05GV-8101 with my personal Laptop & Printer having driver
CT Deepak No. 4492/GGM, present at Alawalpur Chowk, palwal
were in connection with patrolling & for prevention of in drugs.
Then special informer met & informed me that Jetender son of*



Sube Singh resident of Basant Vihar Palwal and Vishal son of Radhe Shayam resident of Village Ferozepur, District Palwal & Madan Gopal son of Halke resident of Kailash Nagar Palwal are in the business of selling Smack (Chitta) and today all three will come today in vehicle No. HR-50-F-9513 to Basant Vihar Colony Palwal with intoxicating substance smack. If a picket is laid in the street along the back wall of ITI in Basant Vihar Colony, then they can be apprehended along with intoxicant substance smack (Chitta). That as the trustworthy, on information of the informer receiving information about narcotic substances, I prepared notice under Section 42 NDPS Act and sent the same through CT Deepak No. 5/699 HAP to the Police Station Camp Palwal for entry in Roznamcha and to inform senior officers. And one raiding party was prepared, which, after informing the independent passersby persons about the information, requested to joining the raiding party and to become private witness, but all of them went from there citing their own legitimate compulsions. That informing all the I employees SI after regarding information, took along the Special Informer in government car to the Oxford School Street and after reaching Basant Vihar Colony, a picket was laid along the back wall of ITI. That at the same time CT Deepak No. 5/99 HAP got registered the Rapat under Section 42 NDPS Act bearing No. 3 dated 18.01.2023 at Police Station Camp Palwal and came to the spot. After waiting for some time, a vehicle No. HR-50-F-9513 Maruti Alto 800 color white was seen coming from the side of Oxford School, 10 Alawalpur flyover and special informer pointed from distance and told that this is the vehicle in which smack is being brought. I ordered to release the special informer at the spot and with the blink of an eye, I apprehended the Car vehicle bearing No. HR-50-F-9513 make Maruti Alto 800 color white. That three persons were sitting in the car, on asking their names-addresses one by one, the driver disclosed his name as Madan Gopal aged 38 Years son of Halkai, resident of Kailash Nagar Police Station Camp Palwal, District Palwal and the young boy sitting on the front passenger seat of the car disclosed his name as



Vishal aged 20 years son of Radheshyam, resident of village Ferozepur Rajput, Police Station Sadar Palwal, District Palwal and the person sitting on the back seat of the vehicle disclosed his name as Jetender aged 41 years son of Sube Singh, resident of Basant Vihar Colony, near Gyan Deep School, Police Station Camp Palwal, District Palwal. I told the three apprehended persons namely Jetender, Vishal and Madan Gopal that I am suspected that you and your car bearing No. HR-50-F-9513 Maruti Alto 800 Color White may have intoxicant substance Smack (Chitta) and I have to search you and your car. Then I prepared Notice under Section 50 NDPS Act and issued separately to all the three persons namely Jetender, Vishal and Madan Gopal aforesaid and the notice was read over and made understood and it was informed that as per the NDPS Act you have right to get yourself and your vehicle searched from some Gazetted Officer/Duty Magistrate. As per your wish, Gazetted Officer/Duty Magistrate can be called at the spot for search. In response to the notice issued under Section 50 NDPS Act, the three persons Jetender, Vishal and Madan Gopal, after consulting with each other, stated that we all have studied uptill 6/7th standard and can read and understand the Hindi language well and can put our signatures and we want to get our search the search of our car No. HR-50-F-9513 Maruti Alto 800 Color White from some Gazetted Officer or Duty Magistrate. That regarding Notice under Section 50 NDPS, we have verbally recorded our respective statement to you. That the replies of all three persons Jetender, Vishal and Madan Gopal to the above mentioned Notice under Section 50 NDPS ACT were separately prepared and on the replies to the Notice under Section 50 NDPS ACT, which were prepared separately, were signed by the aforesaid Jetender, Vishal and Madan Gopal and witnesses. After looking into the list of Duty Magistrate, issued from the office of District Deputy Commissioner Palwal, at 8:40 AM, I contacted Duty Magistrate Sh. Sandeep Dalal, Executive Engineer, DHBVN Hodal Palwal on his mobile No. 90500-71444 from my mobile No. 99993-24671 and informed him about the situation and requested



him to come to the spot, who said that I am going to the Court for testimony, you can call another Duty Magistrate Ravinder Bairwal DHBVN Hodal Palwal in my place, then I/SI contacted Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal on his Mobile No. 80598-88224 from my Mobile No. 99993-24671 at 9:11 AM and informed about the situation and requested to come to the spot, who said that he will be coming to the spot in some time and that after waiting for long time at about 11:30 AM Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal came to the spot, who first inquired about the situation from me and thereafter, seen the notice under Section 42 NDPS Act And Notice under Section 50 NDPS Act and reply to the Notice under Section 50 NDPS Act of the three arrested persons Jetender, Vishal and Madan Gopal and after searching me first asked me to conduct search of the aforesaid three persons Jetender, Vishal and Madan Gopal and their Car No. HR-50-F-9513 Maruti Alto 800 Color White. Then I conducted their search after descending the three persons Jetender, Vishal and Madan Gopal down from the car one by one and of their car No. HR-50-F- 9513 Maruti Alto 800 color white and one plastic bag of white color was recovered from under the front seat of the vehicle, and when in presence of Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal the recovered plastic bag of white color was opened and checked, then as per my experience and as per the information of aforesaid Jatinder intoxicating substance alike Smack (Chitta) was recovered. Then in presence of Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal, I weighed the recovered alike Smack (Chitta) with a digital weighing machine kept in the vehicle and found the total weight of Smack (Chitta) like substance was found to be 355 grams including plastic bag of color white. The three apprehended persons namely Jetender, Vishal and Madan Gopal were asked to produce any license or permit for keeping the intoxicant substance Smack (Chitta) in their possession in vehicle No. HR-50-F-9513 Maruti Alto 800 Color White, who were not able to produce any license or permit nor they could give any satisfactory reply. Then the smack



(chitta) in white color plastic bag recovered in presence of Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal was packed in plastic box and then a parcel of the same was prepared by placing it in one white color cloth, then I sealed the cloth parcel by affixing 3 seals 'KL' of mine and affixed 1-1 seal 'KL' on the cloth of sample seal. Then Duty Magistrate Sh. Ravinder Bairwal DHBVN Hodal Palwal kept his seal with him after use and I handed over my seal to CT Deepak No. 5/699 HAP after use. Then I prepared the recovery memo of the Smack (Chitta) recovered from the vehicle No. HR-50-F-9513 Maruti Alto 800 color white in possession of aforesaid Jetender, Vishal & Madan Gopal & aforesaid vehicle and I took the aforesaid parcel and vehicle No. HR-50-F-9513 Maruti Alto 800 color white in police possession. The recovery memo Smack (chitta) & vehicle No. HR- 50-F-9513 Maruti Alto 800 color white was attested by Duty Magistrate Ravinder Bairwal DHBVN Hodal Palwal and accused and witnesses put their respective signatures. That the aforesaid accused Jetender, Vishal and Madan Gopal have committed an offence under Section 21 (C)-61-85 of NDPS Act by keeping intoxicant substance 355 Gram of smack (chitta) in their possession in their Car No. HR-50-F-9513 Maruti Alto 800 Color White without any license or permit. Therefore, by writing present writing in Laptop, taking printout from printer, the same is being sent to Police Station through Sepoy Deepak No. 5/699 HAP for registration of case. Case be registered and the same be informed at the spot. After preparing special report of the case, the same be sent before senior officers and for further investigation of the case another Investigating Officer be appointed and be sent at the spot. I am present at the spot along with fellow employees accused & recovered parcel of Smack (chitta). Today Oxford School Street, Basant Vihar Colony, Palwal, Longitude 77.336204; Latitude 28.155509 (SI Kimti Lal No. 1862 FBD) HSNCB Criminal Branch PMCUnt Faridabad Dt. 18.01.2023 time 12:30 PM. Today at Police Station: On receipt of the above writing at Police Station, after registration of above case under above offence copies of FIR



were prepared through computer, special reports are being sent before Ilaga Magistrate and senior officers through special messenger EHC Amjad 755. Copy of case file along with original writing are being sent to I/O at the spot through incoming Se. Note: Above case is registered in presence of ASI Anil, Police Station Camp. In the above case I/O is ASI Jasvir Singh'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and was not named in the FIR. He submits that as per the alleged disclosure statement of co-accused Radhye Shyam, the delivery was made by the petitioner but during investigation the petitioner suffered disclosure statement that he got the delivery from co-accused-Rijwan. He further submits that the main accused Madan Gopal and Jitender have been granted the concession of bail by the Court below vide orders dated 15.04.2024 and 10.04.2024 passed in BA No. 232 and BA No. 227 respectively. The contention is that the petitioner is in custody for almost 4 months and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 22 Prosecution Witnesses, only 2 have been examined so far.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 3 months and 28 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is a habitual offender as he is involved in two more FIRs but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 18.9.2023 and charges stands framed on 29.07.2023.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 3 months and 28 days, no recovery has been effected from the petitioner, he was not named in the FIR as an accused and the main accused have already been granted concession of regular bail by this Court and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 18.9.2023 and charges stands framed on 29.07.2023, out of 22 prosecution witnesses, only 2 PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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 the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his/her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

29.08.2024
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No