



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21998-2024
DECIDED ON: 09.09.2024

VISHAL

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Baljeet Beniwal, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.40, dated 18.01.2023, under Sections 21(c), 29 of NDPS Act, registered at Police Station Camp Palwal, District Palwal.

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

"TO SHO, Police Station Camp Palwal "Jai Hind, today on 18.01.2023 I SI Kimtilal No. 1862/EBD, along with fellow officials CT. Deepak No. 5/699 HAP, CT. Gaurav NO. 4747 HAP, CT. Rohitan. 2287 /EBD in Government vehicle No. HR - 05GV - 8101 with driver CT. Deepak No. 4492/GGM carrying his personal laptop and printer, was present for patrolling and drug prevention at Alawalpur Chowk, Palwal. That the secret informer met

me and informed that Jitender S/o Sube Singh r/o Basant Vihar Palwal, Vishal s/o Radheshyam r/o village Firozpur District Palwal and Madan Gopal s/o Halke I/o Kailash Nagar Palwal are involved in selling intoxicant smack (chitta). Today, all three in vehicle no. HR-50F9513 will come to Basant Vihar Colony Palwal with intoxicant substance smack, if blockade is done in the street along the back wall of ITI in Basant Vihar Colony, then drug substance smack (chitta) can be recovered. The information of secret informer can be believed, On receiving the information about the drug, I prepared a notice under section 42 NDPS ACT to lodge a report in daily diary report of the Police Station Camp Palwal through CT. Deepak No. 5/ 699HAP and A party was prepared, passers-by were asked to join the raiding party and become private witnesses, but all of them went away from there by telling their respective compulsions, I SI after informing the staff about the information, along with the secret informer in a Government vehicle started from OXFORD School street, on reaching Basant Vihar Colony along the back wall of III, started blockade. In the meantime CT. Deepka no. 5/99 HAP PS Camp Palwal came on the spot after registering report no.3 dated 18.01.2023 under section 42 NDPS ACT, That after waiting for some time a car no. HR- 50F9513 Maruti Alto 800 color white was seen coming from the flyover side OXFORD School Alawalpur which secret informer pointed out from a distance that this is the car in which smack is being brought. Secret informer was relieved and With the help of the staff, in a blink of an eye, car no. HR-50F9513 Maruti Alto 800 white color controlled along with three people sitting in the car whose name and address were asked in turn by the driver told his name as Madan Gopal s/o Halkai resident of Kailash Nagar

police station camp Palwal district Palwal age 38 years and the young boy sitting on the next conductor seat in the car told his name as Vishal s/o Radheshyam r/o village Ferozepur rajput police station Sadar Palwal, District Palwal age of 20 years and the person sitting on the back seat in the car revealed his name Jitender s/o Sube Singh r/o Basant Vihar Colony near Gyan Deep School, PS Camp Palwal, district Palwal. To the three persons Jitender, Vishal and Madan Gopal, whom I controlled, told that I suspected that you have intoxicant smack (Chitta) which I have to search your vehicle no. HR - 50F9513 Maruti Alto 800 of color white and I have given notice to the above three persons Jitender, Vishal and Madan Gopal Under Section 50 NDPS Act. I Prepared notice under section 50 NDPS act and given separately and the notice was read and explained and told that according to the NDPS law you have the right to get yourself and your vehicle searched by a gazetted officer/duty magistrate. As per your wish Gazetted Officer/Duty Magistrate can be called on the spot for search. In response to the notice under Section 50 NDPS Act, all the three persons Jitender, Vishal and Madan Gopal, after consulting us, told that we all are educated up to class 6/7 and can read and understand Hindi language well and can put their signatures and we want to get the search done by any gazetted officer or duty magistrate of our and our vehicle car no. HR-50F9513 Maruti Alto 800 white color, which we have written to you in relation to the notice under section 50 NDPS, which all three persons Jitender, Vishal and Madan Gopal replied according to the above mentioned section 50 NDPS ACT, Separate notices were prepared. But the above witnesses Jitender, Vishal and Madan Gopal have put their signatures. Seeing the list of Duty Magistrate

issued from the office of District Deputy Commissioner Palwal, at 8:40 AM Duty Magistrate Mr. Sandeep Dalal, Executive Engineer DHBVN Hodal Palwal's mobile no. By contacting your mobile number 9999324671 on 9050071444, told the situation and requested who said that I am going to the court for testimony, you can call another Duty Magistrate Ravinder Bairwal DHBVN Hodal Palwal instead of me on the spot, that I SI contacted Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal at mobile no. 8059888224 at 9:11 AM from my mobile no. 9999324671 and told about the situation and requested him to come on the spot who said that I am coming to the spot in some time which after waiting for a long time at around 11:30 AM Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal came on the spot, who first inquired about the situation from me and brought under control all the three persons Jitender, Vishal and Madan Gopal and inquired about notices issued under Section 42 NDPS ACT and notice under 50 NDPS Act And Seen the answer notice Section 50 NDPS Act and after searching me, the three persons Jitender, Vishal and Madan Gopal above and their car no. HR - 50F9513 asked to search Maruti Alto 800 of color white which I got all the three persons Jitender, Vishal and Madan Gopal aforesaid down from the car alternately all the three persons Jitender, Vishal and Madan Gopal aforesaid and their car no. HR-50F9513 Maruti Alto 800 of Color White When searched, a plastic bag color white was recovered from the bottom of the front conductor seat of the car, which opened the plastic bag color white in front of Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal, opened the recovered and checked the plastic bag color white, according to my experience and as told by Jitender abovesaid, the drug

smack (chitta) was recovered in front of Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal, I weighed the recovered smack (chitta) with a digital weigh machine kept in the car, and the total weight of the smack (chitta) was 355 grams including plastic polythene was found, that the controlled three persons Jitender, Vishal and Madan Gopal mentioned above in vehicle no. HR - 50F9513 Maruti Alto 800 of Color White in possession of intoxicant Smack (Chitta) asked to produce any license or permit, No one can produce license or permit nor can give any satisfactory answer which Duty Magistrate Mr. Ravinder Bairwal, recovered Smack (Chitta) in front of DHBVN Hodal Palwal, put it in a plastic box with white colored cloth, prepared a bundle of white cloth and sealed the cloth bundle and I sealed the bundle with 3 stamps of my KL. And I put 1- 1 stamp of KL on cloth sample seal which was put Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal, I put one of my stamp PS on Pulanda cloth and put 1-1 stamp of cloth sample seal by Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal kept his stamp with him after using it and I handed over the seal to CT Deepak no. 5/699 HAP after using it. I prepared a list of the persons Jitender, Vishal and Madan Gopal and recovery of smack (chitta) from the possession of the above and vehicle no. HR -50F9513 Maruti Alto 800 of color and was verified by the Duty Magistrate Mr. Ravinder Bairwal DHBVN Hodal Palwal and the accused, vehicles and witnesses put their signatures. That accused Jitender, Vishal and Madan Gopal by keeping intoxicant i.e 355 grams of smack (chitta) in vehicle no. HR-50F9513 Maruti Alto 800 of color waite in possessiom without any license and permit has committed the crime under Section 21(C) -61-85 NDPS ACT, so after writing this article and taking

print in laptop Constable Deepak no. 5/699 HAP being sent to the police station. Notify after registration of the case. The special report of the case should be prepared and sent to the higher authorities according to the rules and for the further investigation of the case send another investigating officer on the spot..... Police Proceedings.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the petitioner was sitting on the conductor seat of the alleged vehicle, whereunder the alleged contraband i.e. 355 grams of smack was recovered. He further contends that co-accused namely, Madan Gopal (the driver) and Jitender have already been granted the concession of bail by the trial Court vide orders dated 15.04.2024 (Annexure P-5) and 10.04.2024 (Annexure P-4) and co-accused Riyaj @ Riyaj Ahmed has also been granted the concession of regular bail by this Court vide order dated 29.08.2024 passed in CRM-M-11094-2024. It has been contended on behalf of the petitioner that the petitioner is in custody since 18.01.2023 and challan has already been presented to Court, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars for an indefinite period as conclusion of trial will take a long time as out of total 22 prosecution witnesses, only four witnesses have been examined yet.

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 the dismissal of the instant petition on the ground that the quantity

of contraband involved in the instant FIR i.e. 355 grams of smack is commercial in nature.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 07 months and 19 days for which the petitioner has suffered incarceration; co-accused namely Madan Gopal and Jitender have already been granted the concession of bail by the trial Court vide orders dated 15.04.2024 (Annexure P-5) and 10.04.2024 (Annexure P-4) and co-accused Riyaj @ Riyaj Ahmed has been granted the concession of regular bail by this Court vide order dated 29.08.2024 passed in CRM-M-11094-2024; the petitioner is not a habitual offender as he is not involved in any other case in addition to the fact that investigation is complete, challan stands presented to Court on 14.07.2023, charges have been framed on 29.07.2023 and out of total 22 prosecution witnesses, only four witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a 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.

09.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No