

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216

CRM-M-26590-2024
Date of decision: 29.05.2024

IMMU ALIAS IMRANPetitioner

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. V.K. Pandey, Advocate
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

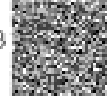
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.0064 dated 06.03.2024, under Section 21(b) of Narcotic Drugs and Psychotropic Substances Act, 1985, and, under Section 25(1) of the Arms Act, 1959 registered at Police Station City Nuh, District Nuh.

ALLEGATIONS AGAINST THE PETITIONER

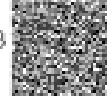
2. The gist of the allegations as culled out from the FIR, reads as under:-

"To Mr. Manager Officer Police Station City Nuh Jai Hind Today I ASI Harvinder No. 115 Nuh alongwith PSI Lalit, HC Lakhanpal No. 38 Nuh Constable Sandeep Kumar 892 Nuh SPO Sunil 70 Nuh Government Passenger vehicle No. HR-03GV-1198 Nuh with Driver CT Ravindra Kumar No. 926 While I was present at Alwar Delhi Road Jhanda Park along with my personal laptop and printer, a special informant informed me that Immu alias Imran, Israel resident of Khedla, Rasid son of Fateh Mohammad resident of Jhanda (Raniala



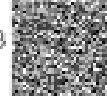
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Khurd) District Palwal, Shahid son of Subedar resident of Khedla Nuh, Taufiq son of Jan Mohammad resident of Akeda District Nuh, are engaged in buying or selling intoxicant smack, which even today stands near the house of Imran son of Israel resident of Khedla (Bagh ki Dhani) they are buying or selling intoxicants and smacks if raid is done immediately then the intoxicants along with the smacks can be controlled. Considering the information as true, I prepared a raiding party and passers-by were asked to become witnesses in the raiding party, but everyone left citing their legitimate compulsions. That I prepared notice under section 42 NDPS ACT through CT Sandeep 892, was sent to police station city Nuh to register the report in the journal in police station City Nuh and to inform the higher officials about the information. He was sent to the police station city Nuh along with his fellow ASI employee in a vehicle near government village Khedla Bagh. I have arrived. Where the special informer pointed his finger from a distance and told that the one wearing blue colored trouser or black leather jacket was Immu alias Imran son of Israel, resident of Khedla, the one wearing blue jacket or black colored jeans was Rasid son of Fateh Mohammad. This is Shahid, son of Subedar, resident of Khedla Nuh, who is wearing blue colored jersey or blue jeans, this is Taufik, son of Jan Mohammad, resident of Akeda, district Nuh. I asked the informer to leave. I apprehended the above mentioned persons with the help of the team after quoting the same informer. On asking their name and address, one revealed his name as Immu alias Imran S/o Israel resident of Khedla, Rasid son of Fateh Mohammad resident of Jhanda (Raniala Khurd) District Palwal, Shahid son of Subedar resident of Khedla Nuh., Taufik son of Jan Mohammad, resident of Akeda District Nuh told. During this time CT. Sandeep came back to the team after registering 42 NDPS information in No.892 Nuh diary. What I told the arrested person is that I suspect that you have a perishable substance, smack, that it is necessary to search you and that separate notices are given to the arrested persons under Section 50 NDPS ACT. The notice



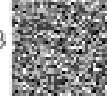
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was given and the notice was read out and it was explained to you that as per the NDPS Act, you have the right to get your personal search done by a gazetted officer. Accordingly, the gazetted officer can be called on the spot. In response to the notice, Immu alias Imran Son of Israel resident of Bedla, Rasid son of Fateh Mohammad resident of Jhanda (Raniala Khurd) district Palwal, Shahid son of Subedar resident of Khedla Nuh, or Taufik son of Jan Mohammad resident of Akeda district Nuh, the above mentioned have stated that they are less educated. But they can understand the Hindi language and can put their signatures on the notices given by you, which you have recited separately to us. We have understood the meaning of the notices and are making you write separately by speaking that we will get the search done from the gazetted officer. After that Immu alias Imran son of Israel resident of Khedla, Rasid son of Fateh Mohammad resident of Jhanda (Raniala Khurd) district Palwal, Shahid son of Subedar resident of Khedla Nuh. Taufik son of Jan Mohammad, resident of Akeda, District Nuh, reply notice 50 NDPS was prepared on the request of the above. The accused and witnesses signed their respective notices. After looking in the list of Duty Magistrate issued from District Deputy Commissioner Office Nuh, I contacted the phone number of Gazetted Officer Shri Ravi Kumar Naib Tehsildar, Indri Nuh. Called from his phone on 9996391530 and informed about the situation and asked him to come at the spot, to which he informed that he will be coming in some time. After some time, Gazetted Officer Shri Ravi Kumar, Naib Tehsildar, Indri, Nuh arrived at the spot along with his staff. I first informed the Gazetted Officer Mr. Ravi Kumar Naib Tehsildar Indri Nuh about the situation and after that the Gazetted Officer asked the names of the arrested persons one by one and after getting me searched by his staff, then asked me to search the apprehended persons. I, ASI conducted the search one by one. During the search, a small white colored polo-chain was found in the right pocket of the jacket of Immu alias Imran, son of Israel, as per my experience and as per the

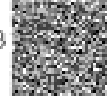


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statement of the accused, intoxicants like Smack/Heroin was found the left pocket. A country made pistol with length of 17 CM, barrel length of 13 CM, but length of 7 CM and two live rounds on which KF 7.65 was written were recovered from the pocket. When the recovered Smack/Heroin was searched with a digital fork kept in the car in front of Gazzeted officer, the recovered Smack Heroin total weight of 26.6 grams was found along with polythene. And as per my experience and as per the statement of the accused, intoxicant smack/heroin was recovered from the small white colored polythene from the right pocket of the jeans of the above mentioned person Rashid S/O Fateh Mohammad. When the recovered Smack/Heroin was measured with digital fork then the total weight of recovered Smack/Heroin was found including 22.4 grams of polythene. And as per my experience and as per the statement of the accused, intoxicant Smack/Heroin was recovered in a small white colored polythene from the right pocket of the lower of Sahid S/O Subedar, which when weighed with digital fork, found the full weight of recovered Smack/Heroin to be 12.4 grams polythene. Moreover, according to my experience and as per the statement of the accused, intoxicant Smack/Heroin was recovered in a small white colored polythene from the right pocket of the aforesaid shirt, which recovered Smack Heroin was weighed with a digital fork and the total weight of recovered Smack/Heroin was 13.5 grams including the polythene found. Those whom I apprehended were Immu allas Imran son of Israel and Rashid son of Fateh Mohammad and Sahid son of Subedar and Taufiq, as above mentioned. I asked the above to produce any license or permit regarding possession of intoxicant Smack/Heroin and country made pistol but Imam Imran and Rashid son of Fateh Mohammad And Sahid's son Subedar and Tofiq could not present any of the above licenses or permits nor could they give any satisfactory answer. After this, I prepared four different box and have put 26.06 grams of smack recovered from the accused Imam Imran S/o Israel in the box, after preparing the box, I sealed them with



2 stamps of my R.K. and after putting the recovered country made pistol in a plastic jar, I put it in my plastic jar. After putting the 22.4 grams of smack recovered from above in a box, I sealed it with 2 stamps of R.K and the accused Rashid, son of Fateh Mohammad, prepared a separate box, and sealed it with 2 stamps of my R.K and the contraband recovered from of 12.4 grams of smack recovered from Sahid, son of Subedar, was put the above in a box. After putting it in a separate box and preparing a planda, I sealed the palanda with 2 stamps of my R.K. and also after putting the 13.5 grams of smack recovered from above in a box, after preparing a separate box planda, I sealed the palanda with 2 stamps of my R.K. and I After preparing four sample seals, R.K. put his stamp on each of the four sample seals. The Gazetted Officer, Mr. Ravi Kumar Naib Tehsildar Indari, over- stamped all the four different boxes of Pulanda Smack with one seal of his S.S. and also over-stamped the plastic jar with one seal of his S.S. and one seal of S.S. on each of the four sample seals. Length of The stamp which I used after stamping was handed over to Cont Sandeep Kumar No. 892/Nuh and the stamp used by gazetted officer kept it with himself after using his seal. I prepared a separate list of receipts of the box of recovered Smack of the accused Immu alias Imran, Rashid Sahid and Tofiq from the above, the box of Pulanda Smack was taken into police custody and the receipt of the list was verified by the Gazetted Officer and the witnesses and the accused put their signatures.. The accused namely Immu alias Imran son of Israel resident of Bedla, Rasid son of Fateh Mohammed resident of Jhanda (Raniala Khurd) District Palwal, Shahid son of Subedar resident of Khedla Nuh, Taufik son of Jan Mohammed resident of Akeda district Nuh illegally had in their possession a total of 74.9 grams of smack/smack have committed offence under of section 21B-61-85 NDPS ACT. Committed the offence of the Indian Penal Code or 25(1) (K)-54-59 A, ACT, by having in his possession 2 live cartridges in an illegal pistol. Therefore, after writing this article in the laptop and printing it from the printer, constable Ravindra No. 926/ Nuh is being sent to



police station City Nuh, after registering the case and informed on the spot or another investigator should be sent to the spot for further investigation of the case. And the special report should be sent to the service of higher officials as per the rules. I am present on the spot along with fellow employees and the accused."

From the reading of the above FIR, it reflects that the recovery effected from the present petitioner is 26.6 grams of heroin, and an illegal pistol, however, the collective recovery in the instant FIR, which has been effected from the present petitioner, and the co-accused is 74.9 grams of smack/heroin.

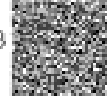
SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) The recovery effected from the present petitioner falls within the ambit of non-commercial quantity, and there is total non-compliance of statutory provision of the NDPS Act;*
- (ii) The trial in the instant matter is yet to begin, therefore, the conclusion of trial will take long time;*
- (iii) Petitioner has suffered incarceration of more than 02 months, as on today;*
- (iv) The final report under Section 173 Cr.P.C., had already been filed on 03.05.2024, and the charges are yet to be framed*
- (v) Out of the total 14 prosecution witnesses cited in the final report, none has been examined till date.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance



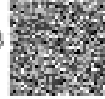
notice, has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, District Prison Nuh, Mewat, Haryana. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 02 months and 09 days, as on today. Learned State counsel on instructions, imparted to him from the official respondent, submits that after conclusion of the investigation, the final report under Section 173 Cr.P.C., had already been filed on 03.05.2024, and the charges are yet to be framed. Learned State counsel further submits that out of the total 14 prosecution witnesses cited in the final report, none has been examined till date.

ANALYSIS

5. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

6. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

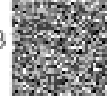
7. The right to a speedy trial is one of the rights of a detained person.



However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

8. In “**Gurbaksh Singh Sibbia v. State of Punjab**”, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the



Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

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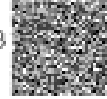
29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail".

30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

9. Also, in **“Gudikanti Narasimhulu and others Versus Public**

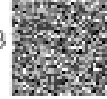


Prosecutor, High Court of Andhra Pradesh”, 1978 AIR (Supreme Court) 429, the Hon’ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

“9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship

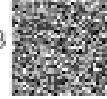


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is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in



prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”

10. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

11. The reason for forming the above inference emanates from the factum that:- (i) The recovery which is effected from the present petitioner falls within the ambit of non-commercial quantity; (ii) The petitioner has suffered incarceration of 02 months and 09 days, as on today; (iii) Out of the total 14 prosecution witnesses cited in the final report, none has been examined till date. (iv) The final report under Section 173 Cr.P.C was filed on 03.05.2024, (v) No fruitful purpose would be served by keeping the petitioner behind the bars, (vi) Trial is not likely to conclude anytime soon.

FINAL ORDER

12. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief

Judicial Magistrate/trial Court/Duty Magistrate.

13. However, anything observed here-in-above shall have no effect on
the merits of the trial, and is only meant for deciding the present petition.
14. All pending application(s) stand disposed of accordingly.

29.05.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No