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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30350-2024
Decided on : 18.07.2024

Rahul

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. Bijender Singh Rana, Sr. Advocate with
Mr. Parveen Kaushik, Advocate
for the petitioner

Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J. (Oral)

1. This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.339 dated 21.12.2023 registered under Sections 22 and 29 of NDPS, 1985 at Police Station Civil Lines, District Rohtak.
2. Learned senior counsel for the petitioner *inter alia* submits that the main accused namely Amit was arrested by the police authorities with 13 bottles of Wincerex Syrup 100 ml. without any licence or permit. Thereafter, the aforementioned FIR was registered. The petitioner was nominated as an accused only on the basis of disclosure statement of the accused Amit. Learned senior counsel further submits that the petitioner is a valid licence holder to sell, stocks or exhibit or offer for sale or distribute drugs by retails and to operate a pharmacy being a proprietor of Dalal Medical Store situated in Shop No. 3, G.F., Plot No. 7-C, Kh. No. 31/10, Baba Haridas Nagar, Village Tikri Kalan, Delhi. It is also



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contended that the petitioner has been falsely implicated in the present case and the same is proved by the fact that he is fairly dealing in sale of medicines/drugs through properly placing orders of purchase vide invoices and selling the same to patients as per prescription of the Doctor to the patients by mentioning their name, aadhar No. and doctor's name on the bills.

3. Learned State counsel has filed the custody certificate dated 17.07.2024, which is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 05 months and 18 days. The challan in the present case was presented on 16.05.2024 but the charges have not yet been framed and the next date of hearing before the learned trial Court is 24.07.2024.

4. Heard.

5. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. It is not disputed that the petitioner is a valid licence holder and is in custody since 27.01.2024. The charges have not yet been framed and this Court is of the opinion that further incarceration will not served any purpose.

6. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied to the accused as is the mandate of the Apex Court in ***Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 98***, wherein it was held as under:

"10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. Etc. -(1995) 5 SCC

326-para 2 are as follows:



"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit.



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We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

7. Moreover 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. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

1. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non- availability of witnesses or otherwise.

8. 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



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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.*

9. 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.

(KIRTI SINGH)
JUDGE

July 18, 2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No