

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37816-2024

Date of Decision: September 11, 2024

AMIT KUMARPetitioner(s)

VERSUS

STATE OF HARYANARespondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Chetan Sharma, 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.19 dated 09.02.2023, under Sections 22-C, 27-A of NDPS Act, 1985 and Section 201 of IPC, registered at Police Station Uchana, District Jind.

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

‘To, the Station House Officer, Uchana, Jai Hind! Today on 09.02.2023, myself, Si Satyapal Singh No. 147/FTB, Haryana State Narcotics Control Bureau Unit Hisar along with the fellow employees EASI Sanjay Kumar No.364/Hisar, HC Rajbir No.77/Hansi, in a Private Vehicle bearing Nc.HR-51AU-5259 Make Ritz, driven by EHC Wajir No.874/Hansi in connection with prevention of drug crime were present in front of AK Hotel on Karsindhu to Chhatar Road that secret informer met and informed that Ashok Kumar son of Dalbir Singh, resident of



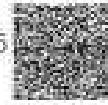
Chhatar will go for the supply of drugs on Motor Cycle bearing No.HR-90-3019 Make Hero Splendor, black in colour, if barricading (Nakabandi) is done, then he can be apprehended with the drug tablets. The information being confirmed and convincing person, myself SI informed the fellow employees about the information and after that prepared a report under Section 42 NDPS ACT and is being sent to Police Station Uchana, Jind for information by hand through EHC Wajir No.874/Hansi. Daily Diary Report be recorded and a copy of Report be informed and information be sent to the higher authorities as per the Rules. Myself Si along with the fellow employees with private vehicle started barricading on the spot on AK Hotel Karsindhu to Chhatar Road and started checking the traffic vehicles, after some time two young boys were seen coming on a motorcycle from the village Chhatar. Seeing the police party standing in front, they started turning the motorcycle back, then with the help of fellow employee, both the young boys along with Motorcycle No HR90-3019, black and purple in colour were controlled and asked the name and address, on inquiry first of all, the motor cycle driver told his name as Amit Kumar son of Suresh, resident of Chhatar, District Jind and then the other boy sitting behind on the motor cycle by carrying the bag was asked the name and address, he told his name as Ashok Kumar son of Dalbir, resident of Chhatar, District Jind. Thereafter, I, Si having concrete information of drugs with the above named Ashok Kumar, Amit Kumar in the bag on the motorcycle, firstly above named Ashok Kumar was given notice as per Section 50 of NDPS ACT that "I SI Satyapal Singh No. 147/FTB am posted as investigation officer in the HSNCB Unit Hisar. I have given full introduction of me and my team to you Ashok Kumar son of Dabir Singh, resident Chhatar. I have received information about the presence of intoxicants in your Motorcycle No.HR- 90-3019 Make Splendor, yourselves and in the black and purple coloured bag held in your hand. You have a legal right regarding search that if you want to get yourself, your bag and motorcycle searched in the presence of a Gazetted Officer or the nearest Magistrate, then they can be called on the spot or you can be presented before them. The notice has been read over and explained to you. You should be informed by the notice and express your wish. The notice



under section 50 NDPS ACT was prepared." After that, Ashok Kumar, after thinking for some time, got his reply to notice recorded under Section 50 NDPS ACT that "I, Ashok Kumar son of Dalbir Singh, resident of Chhatar. You, SI Satyapal Singh No. 147/FTB, HSNCB Unit Hisar has given me full introduction of yourself and your team. I have read and understood the notice under section 50 NDPS ACT given by you. I want to get myself bag carried in my hand and my Motor Cycle No. HR-90-3019 Make Splendor searched on the spot in the presence of a Gazetted Officer. You call a Gazetted Officer on the spot. I have got recorded my reply to notice to you by speaking. You have read over and explained the reply to notice to me. Reply to Notice under section 50 NDPS ACT was prepared. Thereafter, I, SI gave a notice to above named Amit Kumar as per Section 50 of NDPS ACT that "I SI Satyapal Singh No. 147/FTB am posted as investigation officer in the HSNCB Unit Hisar. I have given full introduction of me and my team to you Motor Cycle Driver Amit son of Suresh, resident of Chhatar. I have received information about the presence of intoxicants with your and in your Motorcycle No.HR-90-3019 Make Splendor. You have a legal right regarding search that if you want to get yourself searched in the presence of a Gazetted Officer or the nearest Magistrate, then they can be called on the spot or you can be presented before them. The notice has been read over and explained to you. You should be informed by the notice and express your wish. The notice under section 50 NDPS ACT was prepared. After that, Ashok Kumar, after thinking for some time, got his reply to notice recorded under Section 50 NDPS ACT that "I, Amit Kumar son of Suresh, am a resident of Chhatar. I am the driver of Motor Cycle No.HR-90-3019. You, SI Satyapal Singh No. 147/FTB, HSNCB Unit Hisar has given me full introduction of yourself and your team. I have read and understood the notice under section 50 NDPS ACT given by you. I want to get myself and my Motor Cycle No. HR-90-3019 Make Splendor searched on the spot in the presence of a Gazetted Officer. You call a Gazetted Officer on the spot. I have got recorded my reply to notice to you by speaking. You have read over and explained the reply to notice to me Reply to Notice under section 50 NDPS ACT was prepared." Notice 50 NDPS ACT and reply to notice under 50 NDPS



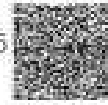
ACT was signed by above named Ashok Kumar and Amit Kumar and the witnesses signed respectively. After that according to the list of Gazetted Officers by the Deputy Commissioner Jind, I, SI from my Mobile No. 98026-29000 contacted Gazetted Officer, Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind on Mobile No.94668-39004 at 4.30 PM and informed about the situation and urged him to come to the spot, he said that I am reaching to the spot after some time and after waiting for some time, at around 7.25 PM, Gazetted Officer Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind came on the spot. Sh. Jitender Singh Dahiya, SDO Irrigation Department, Julana, District Jind, was presented notice and reply to the notice under section 50 NDPS ACT by me, SI after explaining the situation. Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind has seen the notice and reply to the notice under section 50 NDPS ACT. Sh. Jitendra Singh Dahiya, SDO Irrigation Department Julana, District Jind interrogated above named Ashok Kumar and Amit Kumar. After that I offered about the search of me and my team in front of Gazetted Officer, Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind who personally searched me and my team. During the search, no intoxicants were found from me and my team members and a search offer without recovery has been prepared. On which above named Ashok Kumar, Amit Kumar and the witnesses signed their respective signatures and Sh. Jitender Singh Dahiya, SDO Irrigation Department, Julana, District Jind verified the Search Memo of offer of search Gazetted Officer, Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind in his presence, instructed myself SI to carry out the search of above named Ashok Kumar, Amit Kumar, bag and Motor Cycle No.HR-90- 3019 as per the above Rules. First of all, myself SI conducted search of Motor Cycle No.HR-90-3019, no intoxicant was found in the motor cycle, after that the motor cycle driver namely Amit Kumar was searched according to the Rules, then no intoxicant was found in his body. Then search of above named Ashok Kumar was carried out, then no intoxicant was found from his body, then the bag carried by above named Ashok Kumar was opened and checked, it was containing 7 boxes of drug tablets in a



transparent waxy polythene, TRAMADOL HYDROCHLORIDE TABLETS USP 100 mg. Newtram- 100 SR and each box is containing 50/50 leaves, each leave containing 10/10 tablets and total 3500 tablets in 7 boxes Make TRAMADOL HYDROCHLORIDE TABLETS USP 100 mg, and each box's Batch No. T12222011, MFG Date Feb. 2022, EXP-Jan 2024, MRP-Rs.195, manufactured by NEWTECH LIFESCIENCE LLP 20 DRASHAN INDUSTRIES NEAR AMRUT UDHYOG NAGAR, LASKANA, KAMREJ ROAD KHOLVAD, SURAT, GUJARAT-395006. Each box was numbered from 1 to 7. One leaf from Box No. 1 of tablet Tramadol was taken out and 10 tablets were weighed on an electronic computer weighing scale, then the weight of 10 tablets was 4.60 grams, according to this weight, the total weight of 3500 tablets become 1610 grams, then by putting the removed tablets back into the leaf and by putting in Box No.1 and by putting 7 boxes tablets back in the same transparent waxy polythene, a cloth parcel was prepared and 7 transparent waxy polythene boxes of intoxicant tablets ALPRAZOLAM TABLETS 1.P. 0.5. mg ALPCORE-0.5 MG, each box containing 60/60 leaves, each leave containing 10/10 tablets and in total 7 boxes, 4200 intoxicant tablets ALPRAZOLAM TABLETS 1.P 0.5 mg and each box's batch No. T12212-A, MFG DATE OCT 2022, EXP-SEP 2024 MRP-RS-24. which are manufactured NEWTECH LIFESCIENCE LLP 20 DARSHAN INDUSTRIES NEAR AMRUT UDHYOG NAGER, LASKANA, KAMREJ ROAD, KHOLVAD, SURAT, GUJARAT-395006. Each box was numbered from 1 to 7. From Box No.1 by taking out Tramadol Tablets from one strip and weighed 10 tablets on an electronic computer weighing scale, then the weight of 10 tablets was 1.10 grams, according to this weight, the total weight of 4200 tablets becomes 462 grams. Which is in commercial quantity According to NDPS ACT notification digit 238 ZH and 178 respectively the same are banned tablets and come under the category of NDPS ACT. Then put the taken out tablets back in the leaf and by putting in box no.1 and by putting 7 boxes of tablets back in the same transparent waxy polythene, a cloth parcel was prepared and a parcel of the black and purple bag in which 14 boxes of intoxicant tablets were recovered was prepared in a separate cloth. Three parcels of intoxicant tablets, bag and sample seals all were



stamped by me, St with my stamp SS/3-3. After using and keeping the sample, stamp, the sample seal was handed over to EASI Sanjay Kumar No.364/Hisar. After that, Gazetted Officer, Sh. Jitender Singh Dahiya, SDO Irrigation Department, Julana, District Jind, after stamping all the parcels and sample seals with his stamp SP/1-1, he kept the seal with him after use. Parcels of drug tablets and empty bags sealed with the seal SS/3-3. SP/1-1 with sample seal, motor cycle No.HR-90-3019 Make Hero Splendor Plus, black in Color Black were taken in the Police Possession by the Police through a property seizure menos as evidence. Above named Ashok Kumar and Amit Kumar and the witnesses put their respective signatures on the property seizure memo. Gazetted Officer, Sh. Jitender Singh Dahiya, SDO Irrigation Department Julana, District Jind also verified cloth parcels of intoxicant tablets and bags duly sealed with SS/3-3, SP/1-1 including sampie seal and property seizure memos. During the entire proceedings, the general public was asked to participate in the proceedings. But all of them went away from the spot by expressing their compulsion without telling their name and address. Whereas above named Ashok Kumar and Amit Kumar had in their possession 3500 intoxicating tablets of TRAMADOL HYDROCHLORIDE TABLETS USP 100 mg weighing a total of 1610 grains and 4200 intoxicating tablets of ALPRAZOLAM TABLETS 1.P.0.5 mg weighing a total of 462 He com grams, by keeping without any license, permit, they have committed the offence under Section 22C-61-85 NDPS ACT. On which, the present writing is being sent to Police Station Uchana by hand through HC Rajbir No. 77/Hansi. After registering a case, the case number should be informed. The special report of the case should be sent to the Higher Officers. MHC Police Station should send another investigation officer on the spot for further investigation. I, Sl with my fellow employees, accused Ashok Kumar, Amit Kumar, am present on the spot with the above mentioned case property. AT In the area of Karsidhu, AK Hotel Karsidhu to Chhatar Road SD- Sl Satyapal Singh 147FTB HSNCB Unit Hisar Date 09.02.2023 At 08.20 Pm Mob. No. 98026-29000. At Police Station: On receiving the above written note by hand through HC Rajbir No.77/Hansi, FIR No. 19, Dated 09.02.2023, under Sections 22c-61-85



NDPS ACT, Police Station Uchana was registered and the copies will be prepared by computer and sent to the Senior Officers. The special report of present case will be sent to Senior Officers by e-mail. The MHC HNCB UNIT HISAR was informed through telephone to send another investigation officer on the spot for further investigation of the case. Copy of Police file along with the original writing was handed over to the arrived HC and sent to the spot.'

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. There is no evidence against the petitioner that could connect him with the alleged commission of the crime. *Challan* stands presented on 03.10.2023 and thereafter on 07.05.2024 and charges were framed on 31.05.2024. Out of total 26 prosecution witnesses, only one witness has been examined till date. And no other case is pending against petitioner under the NDPS Act or otherwise. Learned counsel for the petitioner also submits that co-accused namely Ashok Kumar has been granted the concession of regular bail by this Court vide order dated 14.08.2024 passed in CRM-M-38465-2024.

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.

Learned State Counsel on instructions from the Investigating Officer vehemently opposes the concession of regular bail to the petitioner on the ground that allegations leveled against the petitioner are of serious nature.



He informs the Court that in the present FIR, challan stands presented on 03.10.2023 and subsequently on 07.05.2024 also, charges have been framed on 31.05.2024.

4. Analysis

From the above case it can be culled out that there is no other case under the NDPS Act pending against the petitioner and the co-accused has already been granted the concession of regular bail and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereby in the instant case, challan stands presented on 03.10.2023 and 07.05.2024 and charges having been framed on 31.05.2024 also out of 26 prosecution witnesses, only one has been examined yet 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:-

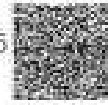
“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences 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

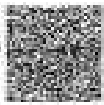


incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

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 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 the 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 hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. 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.

(SANDEEP MOUDGIL)
JUDGE

11.09.2024
Sangeeta

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