

CRM-M-39561-2023
Reserved on: 01.04.2024
Pronounced on : 03.04.2024

...Petitioner

Versus

...Respondent

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

* * * *

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
352	16.08.2020	City Tohana, District Fatehabad	22(C), 27-A & 29 of NDPS Act

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) as per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. Vide order dated 21.08.2023, Co-ordinate Bench of this Court had granted interim bail to the petitioner and the said order is continuing till date.
3. Prosecution's case is being taken from the reply dated 16.09.2023, which reads as follows:-

"That the brief facts of the case are that the present FIR was registered on the complaint of SI Sadhu Ram. Complainant stated that on 16.08.2020, SI Sadhu Ram alongwith other fellow police officials was present at Chandigarh Road, Tohana for crime and vehicle checking duty and in the meantime, one Maruti car was seen coming from the side of Tohana, in which two young boys were seen sitting. Complainant gave signal to stop the vehicle, but the driver of the car suddenly turned back the vehicle and started fleeing towards city Tohana and complainant (SI Sadhu Ram) along with other fellow police officials followed the said vehicle and the two young boys parked the vehicle in a street near Punjabi Basti, Tohana and fled the spot after alighting from the vehicle. Complainant alongwith fellow police officials tried to apprehend both the young boys, but they succeeded in fleeing from the spot. The registration number of said car was found PB10AE9786 make Maruti 800 and one cloth bag was found kept on the rear seat of the said car. On having suspicion of some intoxicating material in the bag, complainant informed Sh. Gaurav Kansal, Executive Engineer-cum-Duty Magistrate, Tohana and

he was requested to reach at the spot who reached at the spot after one hour. On the directions of Sh. Gaurav Kansal, Executive Engineer Tohana, the vehicle was checked and the cloth bag kept on the rear seat of the vehicle was found containing 648 strips (containing 10 tablets each) of Tramadol Prolonged Release Tablets Clovidol-100 SR bearing batch No. PTB- 053 mfg. 05/2019, Exp.04/2021 (total 6480 tablets) total weighing 3 kg. 345 grams with weight of the strips.

On further checking of the vehicle, one /plastic bag containing 3095 strips (containing 10 tablets each) of Tramadol Hydrochloride 100 mg. Tablets Clovidol-100 SR bearing Batch No. 19647 mfg. FEB-2020, EXP. Jan/2023 (total 30950 tablets) total weighing 16 kg. 358 grams with weight of the strips, was also recovered from the boot of the car. The recovered contraband was converted into separate parcels and sealed with seal having inscription "SR" and Sh. Gaurav Kansal, Executive Engineer-cum-Duty Magistrate, Tohana also affixed his seal having inscription "RL" and the recovered contraband was taken into police possession vide a separate seizure-memo. Upon the complaint of complainant, present FIR bearing no. 352 dated 16.08.2020 was registered under section 22(c) of the NDPS Act at Police Station City Tohana, District Fatehabad (Haryana) and investigation was carried out.

3. That after registration of FIR, investigation was entrusted to ASI Mahender Singh no. 27, Police Station City Tohana who prepared rough site plan of the place of occurrence on the demarcation of complainant.

4. That on 17.08.2020, during the course of investigation, Jaswant Singh alias Jassa son of Kundan Singh resident of Indira Colony, Tohana made call from his mobile number 9416443846 and called the investigating officer on spot. His statement u/s 161 Cr.P.C. was recorded in which he stated that on 16.08.2020, when he was pouring fertilizer in his fields, then he saw 2 young boys running from Punjabi Basti to Indira Colony Tohana and one young boy was running ahead, was slim, whereas another boy was having strong built and he was running behind that slim young boy and strong built boy said to that boy running in front, "Bhagwan Singh take me with yourself". Jaswant Singh further stated that one blue colour polythene dropped in the fields by slim boy running in front. On 17.08.2020, said Jaswant Singh alias Jassa also produced the original RC of Maruti car number PB10AE9786, 2 pages of Form no. 29 & 30 having signature of Madhu Rani, affidavit of Joginder Singh regarding sale of car, photocopy of aadhar card of Bhagwan Singh (co-accused), affidavit of Didar Singh regarding sale of car, pollution control certificate. Investigating officer took all the documents into police possession vide property seizure. Documents were found to Jaswant Singh alias Jassa in his fields which he has taken on rent for cultivation.

5 That further investigation was entrusted to SI Surender Singh, Anti Narcotic Cell, Fatehabad.

6. That during the course of investigation, on 23.11.2020, upon secret information, co-accused Manpreet Singh alias Babbu was arrested in accordance with Law and on 24.11.2020, he got recorded his disclosure statement wherein he disclosed that "on 15.08.2020, present petitioner-accused Lovepreet alias Latti, Gurpreet Singh alias Happy and Bhagwan Singh came to his village Jassowal Shuda and they decided to purchase intoxicating tablets and co-accused Gurpreet from number mobile 82643-07991 (belonging to co-accused Manpreet Singh alias Babbu) called on mobile number 99508-76723 (of the co-accused Mukesh). Co-accused Manpreet Singh alias Babbu further disclosed that amount of Rs.

1,00,000/- was collected by all 4 persons by giving Rs. 25,000/- each and in the evening, co-accused Manpreet Singh alias Babbu alongwith present petitioner-accused Lovepreet alias Latti, Gurpreet Singh alias Happy and co-accused Bhagwan Singh reached in hotel near village Bhatla in the Maruti car bearing registration PB10AE 9786 and another motorcycle and on 16.08.2020, co-accused Manpreet Singh alias Babbu alongwith present petitioner-accused Lovepreet alias Latti, Gurpreet Singh alias Happy and Bhagwan Singh purchased two bags of intoxicating tablets from person having mobile number 99508-76723 (of the co-accused Mukesh) and accused Bhagwan Singh gave amount of Rs. 1 lac to said person (co-accused Mukesh) having mobile number 99508-76723". In pursuance of disclosure statement, co-accused Manpreet Singh alias Babbu got demarcated the place, where he & co-accused Bhagwan Singh abandoned the Maruti Car bearing Reg. PB10AE9786. He also got demarcated the place where documents of car were thrown by co-accused Bhagwan Singh and also demarcated the place in village Bhatla from where recovered intoxicating Tramadol tablets were purchased from the co-accused Mukesh Kumar.

4. Petitioner's counsel seeks bail on the ground of pre-trial custody which is more than 02 years & 09 months and he further submits that they would have no objection in any condition whatsoever including surrender of firearms and keeping of one mobile number.

5. Counsel for the State opposes the bail.

6. The petitioner indisputably has no criminal antecedents and has already completed pre-trial custody exceeding two years and six months. Thus, he is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted only when the three conditions are fulfilled,

- (a). The custody of more than 2 years and 6 months and the delay was not attributable to accused.
- (b). The trial is at an initial stage.
- (c) The petitioner is the first offender.

7. The petitioner fulfills all the three conditions and thus, section 37 of NDPS Act would not be attracted. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal v. State (NCT of Delhi), **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

8. Counsel for the petitioner submits that petitioner is appearing before the Trial Court on each and every date of hearing and never misused concession of bail granted to him by this Court.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail and order dated 21.08.2023 is made absolute subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.

11. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, 2023 INSC 655, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on

bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers.”

12. Given above, **Petition is allowed** in the terms mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

03.04.2024
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.