



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39407-2024

Date of Decision: September 05, 2024

DEVENDERPetitioner(s)

VERSUS

STATE OF HARYANARespondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.H.N. Sahu, Advocate and
Mr. Sunil Sihag, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

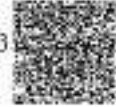
The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.384 dated 27.12.2022, under Section 21 of NDPS Act, 1985 (Section 29 NDPS Act and Section 201 of IPC, 1860 added later on), registered at Police Station PGIMS Rohtak, District Rohtak, Haryana.

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

‘To the SHO, P.S. PGIMS Rohtak. Today I SI and ASI Sajjan Kumar No.1573/RTK, HC Jitender No.31/57 IRB STF Unit Rohtak, were present at Delhi By-pass Rohtak, then I received a secret information that ORP/ASI Tejvir No.1849/RTK STF Unit Ambala and his team on the basis of suspicion under NDPS Act apprehended Devender S/o Ramphal, R/o Rudiawas, P.S. Salhawas, District Jhajjar, near MDU Wall, Jhajjar



Road, near Delhi By-pass. On which I sent a written notice under Section 42 NDPS Act through HC Jitender No.3/157 IRB to Police Station PGIMS Rohtak and I reached on the spot where ORP/ASI Tejvir No.1849/RTK STF Unit Ambala, HC Gorkha Malik No.47/RTK, Ct. Sandeep No.1782/SPT alongwith his team were found present there and presented a car Centro No.HR-10P-2151 and three young boys, out of which one boy carried rucksack bag in his hand. I enquired about their whereabouts, then the boy who carried rucksack bag disclosed his name as Devender S/o Ramphal, R/o Rudiawas, P.S. Salhawas, District Jhajjar and second boy disclosed his name as Ct. Raj Kumar No.4/221 IRB S/o Vijender, R/o Kasni, P.S. Sadar Jhajjar and third boy disclosed his name as Ct. Manjeet Kumar No.4/616 S/o Suresh Kumar, R/o Dubaldha, P.S. Beri, District Jhajjar. On which I served notice under Section 50 NDPS Act to boy namely Devender who carried rucksack bag and gave my full introduction and told him that you have legal right to conduct your search from any Duty Magistrate. After going through the notice, boy namely Devender gave written reply to notice that I want to conduct the search of my rucksack bag before Duty Magistrate. On which, I contacted with Sh. Ashok Kumar Bansal, SDO, Irrigation Department on his Mobile No.89503773839, who was appointed as Duty Magistrate under NDPS Act and requested him to reach on the spot. At about 5:47 pm, Sh. Ashok Kumar Bansal, SDO, Irrigation Department as Duty Magistrate came on the spot and in his presence checked the rucksack bag, then from the rucksack bag smack got recovered from five small polythene, on which electronic weighing machine was arranged and weighed the polythene alongwith smack, then the total weight comes to be 470 gm, which was put into a plastic container alongwith polythene and palanda was prepared. Palanda was sealed by me with my one seal impression RS and palanda of rucksack bag was prepared separately and served with seal impression RS and affixed total 5 seal impressions on the palanda. Seal after use and after keeping sample seal was handed over to witness ORP/ASI Tejvir No.1849/RTK STF Unit Ambala and Sh. Ashok Kumar Bansal, SDO, Irrigation Department, Duty Magistrate attested the palandas. Palanda of smack and rucksack bag alongwith seal and car Centro bearing No.HR-10P-2151 were taken into police possession as an evidence vide separate recovery memo. Sh. Ashok Kumar Bansal, SDO, Irrigation Department, Duty Magistrate and



witnesses and accused Devender put their signatures respectively. Because accused Devender by keeping 470 gm smack in his possession alongwith Ct. Raj Kumar No.4/221 IRB S/o Vijender R/o Kasni, P.S. Sadar Jhajjar and Ct. Manjeet Kumar No.4/616 IRB S/o Suresh Kumar, R/o Dubaldhan, P.S. Beri, District Jhajjar have committed offence under Section 21 of NDPS Act. Therefore, rqua has been sent through HC Gorkha Malik No.47/RTK to police station for registering the case. FIR number be intimated after registering the case and another investigating officer be sent on the spot and special reports of case be sent to higher officers and Illaqa Magistrate as per rules. I alongwith fellow officials, accused and case property is present on the spot. Today Jhajjar Road Near Delhi By-pass MDU Wall Ranbir Singh Sub-Insp. No.331/H Special Task Force (H) Unit Rohtak.'

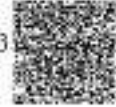
3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been in custody since 27.12.2022. He submits that compliance of Sections 42 and 50 of NDPS Act are surrounded with suspicion. Learned counsel for the petitioner contends that the alleged recovery of 471 grams of heroin was made from the joint possession of all the accused and except for the petitioner all the other co-accused have been granted the concession of regular bail by the trial Court even wherein the custody was on lesser side. Learned counsel for the petitioner further submits that there no other case pending against the petitioner meaning thereby he is not a habitual offender.

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. According to which, the petitioner is behind bars for almost 01 year 08 months 02 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 18.05.2023 and charges stand framed on 21.10.2023.

4. **Analysis**

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 01 year 08 months 02 days and there is no other case pending against the petitioner meaning thereby he is not a habitual offender and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 18.05.2023, charges stand framed on 21.10.2023, out of 21 prosecution witnesses, none 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 aforesaid discussions made 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.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

05.09.2024
Sangeeta

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