



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39297-2024
DECIDED ON: 02.09.2024

WARIS@VARIS

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Saini, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.421, dated 05.08.2023, under Sections 21, 22-C, 29 of NDPS Act and Section 25(1)(B) of Arms Act, registered at Police Station Ambala Cantt, District Ambala.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Sir, The copy of the statement is as follow: To the SHO, PS Ambala Cantt Jai Hind. Sir Today I SI alongwith HC Amrit Lal, HC Nisar Khan, HC Dharambir Singh and EHC Ramesh Chand were on govt. vehicle No. HR70GV-7415 driven by C Parveen Kumar with our own laptop and printer for patrolling duty from CIA-ll Ambala Cantt. at 4.30 P.M. and reached near Savoy Hotel Ambala Cantt. at around 4.40 P.M. where the informer had met

and gave the secret information that Rajni w/o Mandeep resident of Kaccha Bazar ambala Cantt. along with her accomplice Pratham resident of Lal Kurti Bazar, Ambala Cantt. is doing work of selling Narcotics substances. Today also she will come on her active No. HR85F 2977 after sometime for selling it to a customer near topkhana Bazar, Ambala Cantt. In case Nakbandi is set up near Commissioner house, Ambala Cantt. then above named Rajni and Pratham can be apprehended with heavy quantity of narcotics. The secret information is from reliable source. Upon this I, SI sent HC Dharambir singh to PS Ambala Cantt. giving secret information in writing to the SHO Ambala Cantt. I SI had separately prepared notice u/s 42 NDPS Act and it was sent to Sh. Ashish Chaudhary HPS/DSP Ambala Cantt. through EHC Ramesh Chand in his office. I SI had disclosed the facts told by secret informer to the passerby in order to join them as witness but everybody made an excuse and refuse to join. I SI alongwith fellow officials reached Lal Kurti Police Post in the Govt. Vehicle and from their lady HC Reena was joined at around 5.20 P.M. and then we reached near the residence of Commissioner Ambala Cantt. A folding barricade was installed for Nakabandi and checking of the vehicles was started and people were requested to join as witness but they denied so making some genuine excuse. At this time HC Dharambir Singh came to the spot after getting DDR No.28 dated 04.08.2023 recorded in the Roz namcha register of PS Ambala Cantt. and had produced its copy to me. At around 5.30 P.M. active No. HR85F2977 was seen coming from Indira Chownk Ambala Cantt with boy and a lady. I alongwith fellow officials stopped it at the Naka and upon inquiry the Activa driver had disclosed his name as Pratham s/o Ashok Kumar resident of House No.

75, Lal Kurti Bazar Ambala Cantt. and the women sitting behind had disclosed her name as Rajni w/o Mandeep resident of house No. 3263, Kaccha. Bazar Ambala Cantt. I SI had told them that I suspect both of you to be in possession of narcotic substance and you have a legal right to get your search conducted in front of gazetted officer or Magistrate and they can be called at the spot. I SI had separately prepared notice u/s 50 NDPS Act which was read over and explained to them and they had signed it in front of witnesses in token of correctness and same was also signed by the witnesses. Both Rajni and Pratham gave their written consent in response to the notice and separate memo were prepared in this regard and were signed by both Pratham and Rajni respectively alongwith the witnesses. At this time EHC Ramesh Chand came to the spot from office of Sh. Ashish Chaudhary HPS/DSP and he had produced notice u/s 42 NDPS Act seen by Sh. Ashish Chaudhary. I SI had called from my Bike No. 996914300 to Sh. Ashish Chaudhary HPS/DSP on his mobile No. 9729990103 and after apprising him of the facts, I had requested him to come to spot and he accepted the same and ordered me to produce both Rajni and Pratham along with their Activa and contraband before him in his office at Ambala Cantt. At 6.P.M. I SI alongwith fellow officials in the govt. vehicle took Pratham and Rajni along with the Activa to the office of Sh. Ashish Chaudhary HPS/DSP Ambala Cantt. where he was present. I narrated the facts and also produced two separate notices u/s 50 NDPS Act and two consent memos of Rajni and Pratham and he had seen both of them. He had disclosed his identity to both Pratham and Rajni and also done inquiry from them and witnesses. And he personally searched me and thereafter he had directed me to conduct personal search of Rajni and

Pratham and the Activa Scooter in his presence. As per his orders I searched the fellow officials and prepared their personal search memo and it was signed by the witnesses and attested by Sh. Ashish Chaudhary. I, SI had firstly searched Pratham in the presence of Sh. Ashish Chaudhary HPS/DSP as per rules then from the right pocket of the pant one knife with a handle was recovered and upon measuring its blade was 12 centimeter long and its handle was 13.5 centimeter long and wooden pieces were attached on both sides of handle and it was operational with button and accused Pratham had failed to produced any license for the same and the knife was recovered vide recovery memo after preparing its scatch. The parcel was sealed with my seal of BS-3 and after use the sample seal was handed over to HC Amrit Lal. After this the personal search of Rajni was done by HC Reena in presence of Ashish Chaudhary HPS/DSP and from the brown colored purse in her left hand heroin was recovered from white polythene and upon weighing the same it was found 10 grams with the polythene bag and the heroin alongwith the polythene bag were put in a small plastic box alongwith the purse and sealed in a parcel which was sealed with my seal BS-3 and after use the seal with the sample seal was handed over to HC Amrit Lal and I SI further conducted search of Avtiva Scooter and from its dikki 22 strips of proxywell spas capsules with 8 capsule each batch No. P06CAC manufactured by Pura and Care Health Care Private Ltd. (A subsdiary of akums drugs and pharmaceutical Ltd. plot No.26-A, 27-30, Sector- 8A, IIE sidul Haridwar Uttrakhand was written. Uponb weighing it on electronic scale its total' weight was 129 grams alongwith strips and 63 strips of SEMPLEX with 8 capsule each on which batch No. W6AA04 manufactured by Pura and Care

Health Care Private Ltd. (A subsidiary of akums drugs and pharmaceutical Ltd. plot No.26-A, 27-30, Sector- 8A, LIE sidcul Haridwar Uttrakhand was written and upon weighing them with strips the total weight was 368 grams. I SI had demanded a license or doctor report but both Rajni and Pratham had failed to produce it. The matter being relating to Narcotics substance the case property is required to the produced before Drug Control Officer Ambala. I had called Dr. Hemant Grover Drug Control Officer Ambala on his mobile No. 9416404474 and requested him to come to spot after disclosing the facts and after sometime he reached the spot and I SI told him about the facts and had presented separate application to him with respect to the recovered intoxicating capsules and after checking he gave his report that the above mentioned drug tramadol falls under NDPS Act category at serial No. 238-24 in the table of NDPS Act and I SI had prepared separate parcel of the capsule and sealed them with my seal BS-3 after this same was handed over to HC Amrit Lal and the parcels were also sealed by Sh. Ashish Chaudhary HPS/DSP with his seal AC-1-1 and after the use he had kepted with him. I took into possession the contraband and the Activa Scooter vide separate recovery memo and it was signed by witnesses and both Rajni and Pratham and Sh. Ashish Chaudhary HPS had attested the parcels of case property, sample seal and the recovery memo. Accused Rajni and Pratham were found in possession of total 85 strips total 680 intoxicating capsules and 10 gram heroin with knife without permit and license and have committed offence u/s 25 (1-B) (b) Arms Act 1959, Sections 21, 22 (c) NDPS Act 1985 and the copy of this report is being sent through HC Dharambir Singh to the police station for registration for the FIR and its number

may be informed and special reports be sent to the higher officials. Investigating officer be please sent to the spot for doing further investigation. I SI is waiting for the investigating officer at the spot. Today at office of DSP Ambala Cantt. Signed Bhupender Singh SI CIA-II Ambala Cantt. Date 04.08.2023 at 11.15 P.M. at police station: upon receiving the above complaint FIR No. 421 dated 05.08.2023 u/s 25 (1-B) (b) Arms Act 1959, Sections 21, 22 (c) NDPS Act 1985 police station Ambala Cantt was registered and its copy are being sent to higher officer and duty Magistrate by email and record is being completed. As per orders of Hon'ble Supreme Court second investigating officer is requisitioned for being sent on spot to the incharge CIA-11 Ambala Cantt. The FIR was registered in presence of ASI Raghubir singh."

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the FIR but was subsequently roped in only on the basis of disclosure statement of co-accused Rajni, from whose conscious possession 10 grams of heroin was recovered. It has been further contended that co-accused persons, namely, Pratham and Rajni have been granted the concession of regular bail by this Court vide common order dated 03.07.2024 (Annexure P-3) passed in CRM-M-12048-2024 and CRM-M-24375-2024 respectively. He further asserts that nothing has been recovered from the conscious possession of the petitioner and is in custody since September 2023.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the alleged contraband involved in the instant FIR is commercial in nature and the petitioner is a habitual offender as he is involved in nine more cases, wherein in five cases he is on bail.

4. Analysis

Be that as it may, considering the custody period i.e. 10 months and 06 days for which the petitioner has suffered incarceration; co-accused persons, namely, Pratham and Rajni have been granted the concession of regular bail by this Court vide common order dated 03.07.2024 (Annexure P-3) passed in CRM-M-12048-2024 and CRM-M-24375-2024 respectively; the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Rajni; nothing has been recovered from the conscious possession of the petitioner added with the facts that investigation is complete, challan stands presented to Court on 08.01.2024, charges are yet to be framed and total 23 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail 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.

02.09.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*