



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40719-2024
DECIDED ON: 29.08.2024

AJAY SINGH
.....PETITIONER

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ankit Chauhan, 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.0608, dated 10.12.2023, under Sections 22(c), 29 of the NDPS Act, 1985, registered at Police Station Naraingarh, District Ambala.
2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Respected Sir, To the Station House Officer, Police Station Naraingarh, District Ambala. Today on 10.12.2023, ASI Matlub Hussain No. 207/AMB HSNCB UNIT AMBALA, ASI SANDEEP KUMAR 75/A, EASI SURENDRA SINGH NO. 414/KKR government vehicle number HR05GV-4720 Mark Scorpio driven by EHC Gurmel Singh 689/KKR, while patrolling, regarding the narcotics drugs at the time of 05.00 p.m. present at

nearby village Hamidpur Narayangarh-Kala Ambala Road. Informed ASI that Gurcharan Singh alias Joni, son of Prem Chand, resident of village Rathali, police station Sadhaura district, Yamuna Nagar, who sell's intoxicating capsules. Today he went from his village Rathali via Galodi Road towards Narayangarh to sell intoxicating capsules. If barricading is done at Galaudi mode on Narayangarh-kala Amb road, then Gurcharan Singh alias Jony can be caught along with the above drug capsules. Informant went away from the spot by giving information about personality or identity of the accused, at the time of 06.00 p.m., after preparing a notice from the SHO, Police Station Narayangarh and preparing a notice under section 42 NDPS ACT, sent the ASI Sandeep Kumar 75/A to the residence of Shri Adarshdeep HPS DSP, Narayangarh and the ASI informed about the barricading to the passers-by, all they went away citing their own legitimate compulsions, after sometime, ASI started barricading along with the other constables by taking the government vehicle to the Narayangarh-Kala Amb Road Galundi turn(mode), where the ASI informed the passers-by about the situation and informed about the barricading, all of them went away citing their legitimate compulsions and after some time, vehicle no. HP-18B-3176 brand Maruti Alto was seen coming from the side of village Galaudi. In which two young boys were seen setting inside, who started turning the vehicle back after seeing the police standing in front of, then ASI on suspect, with the help of constables, caught the two young boys alongwith vehicle no. HP18B-3176 Mark Maruti Alto with white color, which on being asked by the ASI, the boy sitting on the driver's seat revealed his name Birbal alias Lallu son of Maniram resident near Sirmaur Factory Nagal Saketi Police Station Kala Amb District

Sirmaur Himachal or the other boy sitting on the adjacent seat of the vehicle told his name and address as Gurcharan Singh alias Joni, son of Prem Chand, resident of village Rathali, police station Sadhaura, district Yamuna Nagar. ASI revealed his identity and informed that I have information about the presence of drug capsules, both of you and your car to be searched, both of you have legal right to have yourself or your vehicle searched by any Magistrate or Gazetted Officer, on which notice under Section 50 NDPS ACT was prepared separately and read or explained to the above mentioned persons namely Birbal alias Lallu or Gurcharan Singh alias Joni in the Hindi language known to them. The above mentioned Birbal alias Lallu or Gurcharan Singh alias Joni and witness signed their respective signatures, after which Birbal alias Lallu and Gurcharan Singh alias Joni, after thinking and understanding for some time, told that they want to get themselves or their vehicle searched in front of a gazetted officer, Notice Under Section 50 NDPS ACT prepared separately, above named Birbal alias Lallu and Gurcharan Singh alias Joni read out and explained in the Hindi language known to him, Consent Notice Under Section 50 NDPS ACT prepared separately, Birbal alias Lallu and Gurcharan Singh alias Joni has been read out and explained to the above in the Hindi language known to him, the consent notices have been signed by Birbal alias Lallu and Gurcharan Singh alias Joni above and the witnesses. After that at 06.30 PM, I contacted Gazetted Officer by ASI from mobile number 9729748786 By calling at mobile number 7988015043 of Shri Vishal Assistant Excise Taxation Officer DETC (ST) AMBALA, explained about the situation and informed to come on the spot, Gazetted Officer Shri Vishal Asst. Excise Taxation Officer DETC

(ST) AMBALA arrived at the spot in the Government vehicle at 07.30 p.m., as per notice or consent by ASI under Section 50 NDPS ACT or Birbal alias Lallu and Gurcharan Singh alias Joni mentioned above or vehicle no. HP 18B-3176 brand Maruti Alto color white were presented before them, who as per rules see notice under section 50 NDPS ACT or consent notice under section. 50 and revealed their identity to the above mentioned Birbal alias Lallu and Gurcharan Singh alias Jony and after interrogating them, they conducted searching alongwith ASI and other constables as per the rules and nothing has been recovered from the ASI and all the constables other than the daily need things. Fard Jamaatlaashi Adambaramadagi prepared Separately and ASI, Constables, above mentioned persons Birbal alias Lallu and Gurcharan Singh alias Joni or Gazetted Officer signed their respective signatures, after that the Gazetted Officer as per rule ordered to ASI to conduct search of above said Birbal alias Lallu or Gurcharan Singh alias Joni and vehicle no. HP 18B-3176 brand Maruti Alto color white, as per the orders of Gazetted Officer Shri Vishal Assistant. Excise Taxation Officer DETC (ST) AMBALA, as per rule ASI conducted search of above mentioned Birbar alias Lallu or Gurcharan Singh alias Joni and vehicle no. HP 18B-3176 brand Maruti Alto color white. During search 30 leaves of intoxicating capsule SPASMO-PROXYVON PLUS B.No. WAA3044 MGF, JUL.23, EXP.JUN.25, which has 24 intoxicating capsules in each leaf were recovered inside the black colored polythene held in the right hand of Gurcharan Singh alias Jony above, total 30X24720 intoxicating capsules in 30 packets, weight of SPASO-PROXYVON PLUS of one packet of 24 capsule without packet is 14.56 gram and weight of total 720 intoxicating

capsules without packet is 14.56X30436.8 grams. On the demand of ASI, Birbal alias Lallu or Gurcharan Singh alias Jony could not produce any license regarding the intoxicating capsules mentioned above, after that at 07.00 PM, ASI contacted Mr. Hemant Grover Drugs Control Officer Ambala District Ambala from his mobile number 9729748786 on mobile number 9416404474 and informed about the situation, who told me on the phone that will take the photos of the recovered intoxicating capsules along with the marks or write a separate application and send it to me through WHATSAPP, than ASI will take the photos of the recovered intoxicating capsules along with the marks and separate application was written and sent on WHATSAPP to Mr. Hemant Grover, Drugs Control Officer, Ambala District, Ambala, on his mobile number 9416404474 and it was written in the application for the opinion, whether these capsules come under the category of NDPS ACT or not, which Mr. Hemant Drugs Control Officer, Ambala, District Ambala, after checking, stated in his opinion that the photo marks of the intoxicating capsules come under the category of NDPS ACT, accordingly ASI, he put the recovered intoxicating capsules back in the same black polythene, put them into a white colored cloth bag and prepared a palanda separately, ASI stamped his 3 stamps of MH mark and sealed it and Sample seal was prepared by stamping on the piece of white cloth there with the stamp namely MH and after stamping it was handed over to EHC Gurmel Singh 689/KKR. After that, the Gazetted Officer also stamped on the prepared box of intoxicant capsule or sample seal by putting 1/1 stamp of his AK and kept it with himself after the stamp. The prepared box intoxicating capsules and sample seal were verified by a gazetted officer and signed it, prepared intoxicating

capsules box alongwith sample seal and vehicle no. HP 18B-3176 brand Maruti Alto color white was seized by the police as per evidence. Recovery report of intoxicating capsule and vehicle no. HP18B-3176 were prepared. Above mentioned Birbal alias Lallu and Gurcharan Singh alias Joni or the witnesses signed on recovery report and verified by the Gazetted Officer, the above Birbal alias Lallu and Gurcharan Singh alias Joni have committed the crime under Section 22(c)-61-85 NDPS Act by having illegal possession of 720 intoxicating capsules of the brand SPASMO-PROXYVON PLUS Tramadol. On which a complaint has been written by the ASI and a specific case is being sent to the EHC Gurmel Singh 689/KKR police station Naraingarh. The case should be registered and informed with the case number and the Ilaqua Magistrate or higher officials should be informed through the special report of the case and the in-charge HSNCB UNIT AMB has been informed about separate another investigation officer sent for further investigation on the spot, as the ASI is busy in the investigation on the spot. Today on Galaudi turn (Mode) Narayangarh Kala Amb Road, Near Village Hamidpur SD MATLUB HUSAIN ASI HSNCB UNIT AMBALA DATE 10.12.2023 TIME 08.15 PM, Police Station: above letter received in the police station by EHC Gurmel Singh 689/KKR, crime happened under section 22(C)-61-85 NDPS ACT, case no. 608 Dated 10.12.2023 Section 22 (C)-61- 85 NDPS ACT was prepared by Police Station Narayangarh District Ambala and the copy is being handed over to the police or the original complaint is being handed over to the EHC Gurmel Singh 689/KKR and is being sent to the investigating Officer. SHO has been informed about the situation on his phone. A copy of the special report of the first information report is being

sent via e-mail. The record has been done as per rules. This case has been chalked out in the presence of S. Deputy Inspector Ramkaran. 13. Action taken : since the above information.”

3. **Contentions**

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 on the basis of disclosure statement of co-accused. He further contends that nothing has been recovered from the possession of the petitioner and no role has been attributed to connect him with the alleged offence. It has been asserted on behalf of the petitioner that the petitioner has never been declared as proclaimed person/offender by any Court of law.

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 was purchased by co-accused Gurcharan Singh from the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 17 days for which the petitioner has suffered incarceration; the petitioner has been nominated as an accused only on the basis of disclosure statement of co-accused; nothing has been recovered from the possession of the petitioner; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate added with the facts that investigation is complete, challan stands presented to Court on

31.05.2024, charges are yet to be framed and total 20 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.

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.

29.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No