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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-42546-2024

Date of Decision: September 05, 2024

AVTAR SINGH**....Petitioner(s)****VERSUS****STATE OF HARYANA****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ashish Pundir, Advocate and
Shubham Rana, Advocate
for the petitioner.

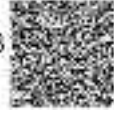
Mr. B.S. Virk, Senior DAG, Haryana.

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

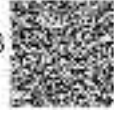
The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.64 dated 12.05.2024, under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Naggal, District Ambala.

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

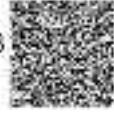
'FIR No.64 dated 12.05.2024, under Section 15 of Narcotic Drugs and Psychotropic Substances Act 1985, Police Station Naggal, District Ambala. Sir copy of writing is as, To, Incharge Officer, Police Station Naggal, Jai Hind. Sir, it requested that today on dated 11.05.2024, I SI alongwith ASI Rajiv Mohan No.211, H.C. Harjinder Singh No.229, EHC Genda Ram: 1006, EHC Vakil Ahmad No.928 in official vehicle Tata Safari No. TO324MH6674d being driven EHC Natender Singh No.924



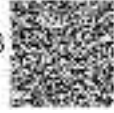
while taking Laptop, Printer and Investigating kit, for patrolling and checking of crime at about 10-15 PM, while going from C.I.A. Staff-1, Ambala City via Sector 10, Durga Nagar, Ambala City, Village Chalana at about 1045 PM are present at Mateheri Bypss Near old Police Station Naggal, near building where I SI received secret information from secret informer tat Avtar Singh son of Ranjit Singh, resident of Village Choti Ghel, Police Station Sadar Ambala who is doing work of selling intoxicant substance poppy alongwith plying his Canter No. HR-37-D-4245 who is coming towards Ambala City while taking huge quantity of poppy husk in his canter. If a nakabandi is held at Tangri Bridge near Jansui Head then Avtar Singh alongwith poppy husk loaded in his Canter can be nabbed. Information is sold and reliable. On that, I SI from my mobile phone No. 94161-13728 made a call to Ms. Srishti Gupta IPS/ASP Ambala on her mobile phone No. 97299-90108 and informed her about the secret information. An a written information letter regarding information was sent to nearest Incharge Officer, Police Station Naggal for information and at about 11.24 P.M. Notice u/s 42 NDPS Act was separately prepared, witnesses put their respective signatures on the notice. Notice was sent through HC Harjinder Singh No.229 to said Ms Sristhi Gupta IPS/ASP Ambala at her official residence. I SI at the spot and in passage, after informing the passerby asked them to make witness but all of them went away from the spot by showing their helplessness. At about 11-30 PM, I SI alongwith official companions reached near Tangri bridge, Jansui head in official vehicle, where I SI stared checking the vehicles coming from Islamabad and after few minutes, from the side of Jansui head, one red coloured Canter was seen coming, on coming near found number as HR-37-D-4245. I SI with the help of official companions signaled him to stop. Person sitting on the driver seat of canter, turned back the Canter on seeing the police and tried to run, to whom I SI with the help of official companioned nabbed and asked his whereabouts who disclosed his name as Avtar Singh son Ranjit Singh, resident of Village Choti Ghel. Police Station Sadar Ambala. I SI told abovesaid Avtar Singh that I am having suspicion of some intoxicant poppy husk in his possession and in his vehicle. You have legal right that you can get conduct your search before any



Magistrate or Gazetted Officers then he cannot be called on the spot. On that, Notice under Section 50 NDPS Act was separately prepared. Avtar Singh reposed his consent on the notice that he wants his search before any Gazetted Officer. On that I SI after seeing list of some Gazetted Officer in my mobile phone at about 11.40 pm., I from mobile No. 94161-13728 made a call to Shri Praduman Naib Tehsildar, Ambala City on his mobile No. 95012-34202 and informed about the information and requested him to reach on the spot. He after accepting request of I SI agreed to reach on the spot. On dated 12.05.2024 at about 12-10 A M.. Shri Praduman Naib Tehsil Ambala City reached on the spot, who after reaching on the spot instructed I SI to conduct personal search of the officials companions involved in the police party with regard to the information. On search of official companions, except the articles for daily use, on not finding any intoxicant substances as per information, personal search memo was prepared. Witnesses put their respective signatures on the memo. And in the presence of Shri Praduman Naib Tehsildar, Ambala City, Avtar Singh and Notice under Section 50 NDPS Act was produced, who after doing seen the notice, introduced himself to Avtar Singh and instructed I SI to conduct search of Avtar Singh and his vehicle, on that I SI on search of Avtar Singh and his vehicle bearing No. HR-37-D-4235, one plastic carry bag was recovered near driver seat of the Canter No. HR-37-D-4235 and on tasting while colored and smelling, intoxicant poppy husk was recovered on the basis of experience. On search of Canter, from the Dashboard of Canter No. HR-37- D-4235, permit of Canter and photocopy of RC was recovered, as per Permit No. HR2023-NP-6539A and RC of vehicle No. HR-37-D-4235, the same is registered in the name of Avtar Singh son of Ranjit Singh, resident of Village Choti Ghel, Police Station Sadar Ambala and one Bilty No. W400 1564257 dated 08.05.2024 which is in the name of Narmda Equipment Pvt. Ltd. Govidpura Bholata to Patiala Locomotive Works Patiala, Punjab and one Invoice E-way Bill No. 661722452201 dated 08 May 2024 in which 7 cases (Boxes) (Bare Magnet Frame) are shown and loaded in the vehicle the value of which is shown as 31,14,020. On search of Avtar Singh, apart from the clothes wearing by Avtar Singh, daily use articles were recovered, which were taken into



police possession vide personal search memo. Personal search memo was separately prepared and after preparing separate parcel of articles recovered during personal search, same was sealed with seal impression BS/3. Avtar Singh could not produce any license or permit for possessing intoxicant substance poppy husk. On weighing intoxicant substances poppy husk recovered from Avtar Singh from Hamra Digital weighing machine, total 22 Kgs 400 grams poppy husk alongwith plastic bag was recovered. After keeping the recovered poppy husk from Avtar Singh in the same plastic bag, parcel was prepared. I SI put my 3 seal impression of BS on the parcel and Shri Praduman Naib Tehsildar Ambala City sealed the parcel of case property with his seal impression SS. Sample seal was separately prepared and parcel of intoxicant substances Poppy husk recovered from Avtar Singh, a bag containing 22 Kgs 400grams poppy husk duly sealed with BS/3, SS/11 alongwith sample seal and permit of Canter and photocopy of RC recovered from the dashboard of Canter No. HR-37- D-4235,, as per Permit No. HR2023-NP-6539A and RC of vehicle No. HR- 37-D-4235, the same is registered in the name of Avtar Singh son of Ranjit Singh, resident of Village Choti Ghel, Police Station Sadar Ambala and one Bilty No. W400 1564257 dated 08.05.2024 which is in the name of Narmda Equipment Pvt. Ltd. Govidpura Bholata to Patiala Locomotive Works Patiala, Punjab and one Invoice E-way Bill No. 661722452201 dated 08 May 2024 in which 7 cases (Boxes) (Bare Magnet Frame) were taken into police possession vide senior memo separately as evidence. Accused Avtar Singh and witnesses put their respective signatures on seizure memo. Shri Praduman Naib Tehsildar Ambala City attested the seizure memo and parcel of poppy husk. After use of seal and after keeping sample seal, I SI handed over seal to EHC Genda Ram 1006 and Shri Praduman Nain Tehsildar Ambala City kept his seal with him. ASI Rajiv Mohan No.211 aferr giving information letter and HC Harjinder Singh No.229 after giving notice under section 42 NDPS Act came present on the spot. Avtar Singh by possessing total 22 Kg 400 grams of intoxicant Poppy husk with plastic bag without any permit or licence has committed offence under section 15 N.D.P.S. Act, on that, writing is being sent through ASI Rajiv Mohan to police station for registration of case. After registration



case number be intimated and copies of First Information Report be sent to higher officers as special reports. For further investigation, another Investigating Officer be sent on the spot. 1 SI is busy in investigation on the spot. Today Tangri Bridge Jansui head in the area of Village Sangli. Sd/- Balkar Singh SI CIA 1 Ambala Date 12.05.2024 at 01:30 AM. POL No.36885, M.No.94161-12728.'

3. **Contentions**

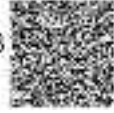
On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The total recovery effected from the petitioner is 22 kgs 400 grams of poppy husk, which is non-commercial in nature. Learned counsel for the petitioner submits that the petitioner has been in custody since 12.05.2024 and except for this there is no other case under the NDPS Act pending against the petitioner.

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 03 months 20 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 04.07.2024 but charges are yet to be framed and there is an another case pending against the petitioner bearing FIR No.18 dated 17.01.2024 under Sections 323, 325, 506 IPC, 1860 registered at Police Station Sadar Ambala, Ambala.

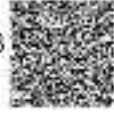


4. Analysis

From the above case it can be culled out that the recovery effected from the petitioner is non-commercial in nature and there is no other case under the NDPS Act pending against the petitioner 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 04.07.2024; charges are yet to be framed and out of 17 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:-

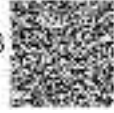
“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences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

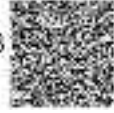


5. *To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor 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

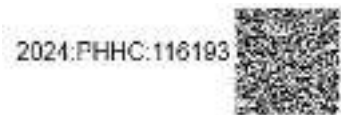


reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference 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.

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 the concession of bail.

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