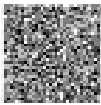


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2024:PHHC:111821



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41034-2024
DECIDED ON: 29.08.2024

BINTU KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manjinder S. Bhullar, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, A.A.G., Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for granting regular bail to the petitioner in case FIR No.0041 dated 15.04.2024, registered under Section 22(c) at Police Station City 2 Abohar, District Fazilka.

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

“ To, Station House Officer, P.s. City -2, Abohar. Today I, Sheeshan Kumar, Drug Inspector, Fazilka alongwith Bhupinder Singh 679 / Fazilka, P.s. City-2, Senior Constable Manjit singh 966/Fazilka, Constable Sandeep Kumar 1253/ Fazilka, P.S. City-2, Abohar on checking arrived at Smeer Medical, Thakur Abadi Road,

Azeemgarh, then a clean shaven (un-turbaned man) ran ahead us on his motorcycle Spellender colour Black No. PB-22-0-8751, we followed him while he entered in his house in Street No. 11, Small Stairs New Abadi, Abohar. To whom I introduced myself and upon asking, he told his name Bintu Kumar s/o Raj Kumar S/o Bhara Ram resident of Street No. 11, Small Stairs, New Abadi, Abohar. While frisked his house then in the kitchen of the first floor from a box ETIZOLAM-MD 0.5 (18) strips having 10 tablets each) in total 180 tables, on each strips the Batch No.GT2402035, MFG dt. Feb 2024 expiry dt. 2026 were found and Rs.82000/-was recovered, about which Bintu Kumar could not respond appropriately. These are the intoxicant tablets and with respect to those an action as per the NDPS Act is to be taken and a person cannot keep those alive in his home. Recovered ETIZOLAM-ETICON-MD 0.5 in total 18 strips each having 10 tablets (in total 180 tablets) alongwith recovered money of Rs.82,000/- is handed over to you, take legal action with respect to this. Sd/ Kishan Kumar 15.04.2024 Drug Inspector, Fazilka.

The Drug Inspector Sheeshan Kumar alongwith police officials was on checking while he reached at Smeer Medical (medical shop of the petitioner), they found one clean shave (un-turbaned) man run ahead them on his motorcycle No.PB-22P- 8751. They followed him while he entered in his home in Gali No.11 Small Stairs New Abadi, Abohar, while his house got checked, then on the first floor in the kitchen the said intoxicant named Etizolam-MD 0.5 (18 strips having 10 tablets each) in total 180 tables, on each strips the Batch No. GT2402035, MFG dt. Feb 2024 expiry dt. 2026 were found and Rs.82000/- was recovered from hand bag. As per prosecution the petitioner could not respond

appropriately with regard to the recovered tablets and the money.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is running a medical shop and has a valid license to keep and sale the alleged tablets. He further contends that the alleged contraband i.e. 180 tablets of Etizolam was recovered from the shop of the petitioner. It has been asserted on behalf of the petitioner that investigation in the instant FIR is complete, challan stands presented to Court on 26.07.2024, charges are yet to be framed and he is in custody since 15.04.2024.

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 recovery of one box Etizolam Eticon-MD 0.5 containing 18 strips each strip containing 10 tablets i.e. total 180 tablets was effected from the house of the petitioner in addition to drug money of Rs.82,000/-.

4. **Analysis**

Be that as it may, the story put forth by the prosecution seems to be totally concocted one which cannot be ruled out *prima facie* at this stage atleast while considering the concession of regular bail. The narrated facts in the FIR is to the effect that petitioner had ran ahead from the police team on a motorcycle which was followed by the police officials right into the street No.11, Small Stairs New Abadi, Abohar and on checking of the first floor of

kitchen, the said tablets are stated to have been found for which the petitioner has been booked in the instant FIR, which fact has been denied by the learned counsel for the petitioner, who submits that actually the alleged contraband i.e. 180 tablets of Etizolam were recovered from his shop which is being run in the name and title of Krisbal Pharmaceuticals as a wholesale chemists and druggists being a duly authorized agency and having a valid license for the same from competent authority i.e. Office of Drug Controller, Government of Punjab.

This Court is also sanguine of the fact with regard to the quantity of alleged recovered tablets i.e. 180 tablets of Etizolam but in the light of the disputed fact qua the place of recovery, the petitioner deserves the concession of regular bail at this stage

Apart from above, considering the custody period i.e. 04 months and 11 days for which the petitioner has suffered incarceration added with the facts that challan stands presented on 26.07.2024, charges are yet to be framed and total 10 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	Yes/No
Whether reportable	Yes/No