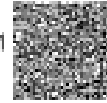


2024:PHHC:127241



211 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-44517-2024
DECIDED ON: 24.09.2024

JAGESHWAR YADAV

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Parminder Singh Sekhon, 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 of Cr.P.C, has been invoked for grant of regular bail to the petitioner in case FIR No. 03, dated 02.01.2024, under Section 18-B, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), registered at Police Station Fatehabad, District Fatehabad.

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

“To the SHO Police Station Sadar Fatehabad Jai Hind Yesterday dated 01.01.2024 | ASI along with

ASI Major Singh No.65/ FTB, EASI Raghbir Singh No. 784/FTB ESI Rajender Prasad No.158/FTB along with Laptop printer on a Govt. Vehicle bearing registration No.HR-22-GV-7824 driven by EHC Ajay Kumar No.375/FTB were present at new bus stand Fatehabad for prevention of intoxicating substance then secret informer came to me and informed that three persons (from Bihar) whose name are Rajesh Yadav, Vikas Kumar and Chander Shekhar, who are opium supplier. Today some time ago I have seen them near village Bhoda Hoshnak highway who were carrying heavy quantity of opium in their Pithu bag if immediate search of three persons would be conducted then from all three persons heavy quantity of opium could be recovered. Finding information credible, for informing the senior police officials a notice under Section 42 of NDPS Act was prepared and get the report register in the police station Sadar Fatehabad and with the duplicate record and notice to the officer Sh. Kulwant, ESI Rajender Prasad No.158/FTB was sent to the police station to inform HPS Deputy Superintendent of Police Fatehabad. After informing fellow employees about the informer, the ASI while searching the people as per the information given by Government official and reached the village Bhoda Hoshnak bus stand and saw three persons sitting on the stone seats inside the bus stand and talking to each other. After seeing the police vehicle suddenly got up from the stone seats, I ASI on suspicion stopped the Government vehicle and alighted from the Government vehicle with the help of fellow officials apprehended all the three persons and asked the reason why they were

sitting at bus stand in the night but they could not give any satisfactory reply. I ASI turn by turn asked their name and their addresses. Then first person disclosed his name Rajesh Yadav son of Ramesh son of Arjun Village Itawa Police Station Dhangai, District Gya Bihar who was tying pithu bag of grey colour on his shoulder and the second persons disclosed his name Vikas Kumar son of Virender Son of Lakhan resident of village Itawa, Polce Station hangar District Gaya Bihar who was also carrying Pithu bag of black and coca cola colour on his shoulder and third person disclosed his name Chander Shekhar son of Madan Mohan son of Nand Kishore Yadav Village Itawa Police Station Dhangai District Gaya Bihar who was also carrying pithu bag of grey and blue colour on his shoulder. On suspicion that Rajesh Yadav, Chander Shekhar and Vikas abovesaid having some intoxicating substance I have given my full introduction to Rajesh Yadav, Chander Shekhar and Vikas abovesaid gave a notice under Section 50 of NDPS Act "I Assistant Sub Inspector Kuldeep Singh No.36/FTB Anti Narcotic Cell Fatehabad inform you Rajesh Yadav son of Naresh son of Arjun Village Itawa Post Office Patluka Police Station Dhangai District, Bihar through this notice that I am having suspicion that you and your pith bag hanged on your shoulder of grey colour having some intoxicating substance therefore, it is necessary to conduct your and your bag search. It is your legal right that if you want to conduct yours and your bag search in front of any Gazetted Official or Magistrate then they can called on the spot or for conducting the search you could be

produced before them along with your bags. Give your consent." On which Rajesh Yadav abovesaid after going through the notice given at my instance gave reply to the notice "I Rajesh Yadav son of Naresh Kumar son of Arjun Village Itawa Post of Office Patluka Police Station Dhangai District Gaya Bihar that I have gone through and understood the notice given at your instance I want to conduct my search and the search of the pithu bag of the black colour hanging on my shoulder through Gazetted Official by calling him on the spot. Like this apprehended person namely Chander Shekhar was also apprised the notice "I ASI Kuldeep Singh No.36/FTB Anti Narcotic Cell Fatehabad inform you Chander Shekhar Son of Madan Mohan son of Kishore Yadav Village Itawa Post office Patluka Police Station Dhangai District Gaya Bihar inform you through this notice that I am having suspicion that you and your pithu bag hanging on your shoulder of grey and blue colour having some intoxicating substance therefore, it is necessary to conduct your and search of your bag. It is your legal right that if you want to conduct your search and the search of your bag in front of any Gazetted Official or Magistrate then they can called on the spot or you could be produced before them for conducting the search, give your consent." On which Chander Shekhar abovesaid have understood the notice given at my instance and gave reply to the notice with his consent "I Chander Shekhar son of Madan Mohan son of Nand Kishore Yadav Village Itawa Post Office Patluka Police Station Dhangai District Gaya Bihar gave reply to the notice that I have undergone the notice given at your instance I

want to conduct my search and the search of pithu bag of grey and blue colour which is hanging on my shoulder in front of Gazetted Official by calling him on the spot. Like this apprehended Vikas Kumar was also apprised the notice "I Assistant Sub Inspector Kuldeep Sing No.36/FTB Anti Narcotic Cell Fatehabad inform you Vikas Kumar son of Virender son of Lakhan Yadav Village Itawa Post Office Patluka Police Station Dhangai, District Gaya, Bihar inform you through this notice that I am having suspicion that you and your pithu bag of black and coca cola colour hanging on your shoulder having some intoxicating substance. Therefore, it is necessary to conduct your and your bag search you have a legal right that if you want to conduct your and your bag search in front of any Gazetted Official or Magistrate then they can called on the spot or for conducting the search you could be produced before them, give your consent." On which Vikas Kumar abovesaid after going through the notice given at my instance gave reply to the notice "I Vikas Kumar son of Virender son of Lakhan Yadav Village Itawa Post Office Patluka Police Station Dhangai District Gaya, Bihar have understood the notice given at your instance and I want to conduct my search and the search of the pithu bag of black and coca colour hanging on my shoulder in front of Gazetted Official by calling him on the spot. On the notices and consent notices, Rajesh Yadav, Chander Shekhar, Vikas Yadav abovesaid and witnesses have signed. After the proceedings of notices and consent notices I have called from my mobile No.87089- 80682 to duty officer Sh. Sharvan Kuma AETO Fatehabad on his

mobile No.94165-43843 at about 11:47 pm and narrated the factual situation and requested him to come on the spot. At about 12.15 am Sh. Sharwan Kumar AETO Fatehabad on his Government vehicle Swift Dzire reached on the spot and who was apprised by me with three notices and three consent notices and produced Rajesh Yadav, Chander Shekhar and Vikas Kumar abovesaid and the witnesses before him. Who after giving his introduction and going through the notices and consent notices interrogated Rajesh Yadav, Chander rvikas Kumar abovesaid and the witnesses and directed me to conduct the search of Rajesh Yadav, Chander Shekhar and Vikas Kumar abovesaid and Pithu Bags of all three separately as per rules I have tried the, passer byes to join the police proceedings but every body has shown their inability and went away from the spot. Thereafter, I have conducted the search of Rajesh Yadav abovesaid as per rules then no intoxicating substance was recovered from Rajesh Yadav thereafter, I have conducted the search of the pithu bag of grey colour which was hanging on the shoulders of Rajesh Yadav then in that one orange colour cloth and one pant of blue colour in which one transparent polythene bag opium was recovered. The recovered transparent polythene bag of opium weighed from computerized weighing scale which was laying in the investigation bag comes to 1 Kg 100 Grams of opium including the transparent polythene bag. Thereafter, the search of Chander Shekhar abovesaid was conducted as per rules then no intoxicating substance was recovered from the Chander Shekhar thereafter, the pithu bag of grey

and blue colour laying on the shoulder in which one pant of white colour and one sky colour shirt in which one transparent bag of polyethene was recovered and the same was weighed through computerized weighing scale laying in investigating bag. Which comes to 1 Kg including the transparent polythene bag. Thereafter, the search of Vikas Kumar abovesaid was conducted as per rule then from the possession of Vikas Kumar no intoxicating substance was recovered, thereafter, pithu bag of black and coca colour which was hanging on the shoulder ore shirt of light pink colour, one white colour sheet in which one transparent polythene bag of opium was recovered which was weighed through computerized weighing scale laying in investigating bag then comes to 900 grams including the weight of transparent polythene. The recovered three transparent polyethene of opium were put in three plastic jars after arranging the same and three bags of opium was converted into parcel by putting the same into plastic jars and on the parcels I affixed my seal KS separately and sample seal was separately prepared and Sh. Sharwan Kumar AETO Fatehabad has affixed his seal SP on three parcels of opium and sample seal was prepared. Thave taken into police custody three parcels of opium and three bags of Rajesh Yadav, Chander Shekhar and Vikas Kumar abovesaid along with their clothes by putting the same, three parcels of opium and sealed plastic jars and sample seal into police custody by preparing the seizure memo. On seizure memo accused Rajesh Yadav, Chander Shekhar and Vikas Kumar abovesaid and the witnesses have signed. I handed over the seal after use to ASI Major Singh

No.65/ FTB and Sh. Sharan Kumar AETO Fatehabad has kept his seal with himself after use and on seizure memo three parcels of opium, sample seal was attested by Sh. Sharwan Kumar AETO Fatehabad at the same time ESI Rajender Prasad No. 158/FTB after registering the report of notice under Section 42 of NDPS Act in police station sadar Fatehabad came on the spot on interrogation all three accused Rajesh Yadav, Chander Shekhar and Vikas Kumar have disclosed that the recovered opium from us are joint and we used to sell jointly accused Rajesh Yadav, Chander Shekhar and Vikas Kumar abovesaid have committed the offense under Section 18(b), 61-85 of NDPS Act by keeping in their possession total 3 Kg of opium.

3. **Submissions**

On behalf of petitioner:

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the disclosure statement of co-accused Rajesh Yadav. It is asserted that the petitioner was not named as an accused in the secret information neither any recovery has been effected from his conscious possession. It has further been asserted that the investigation stands complete and final report has been submitted to the trial court meaning thereby, the conclusion of the trial will take long time to conclude.

Learned counsel contends that since the petitioner was called upon by the police to join the investigation on the disclosure statement of co-accused, was arrested by the police on 03.01.2024 wherein he confessed to have sold the opium to co-accused Rajesh

Yadav.

Reference has been made to the judgment of the Apex court in “ *Toofan Singh Vs State of Tamil Nadu 2021 (4) SCC 1*” wherein it has been held that officers of the Central & State agencies appointed under Narcotic Drugs and Psychotropic Substances Act are police officers and therefore the confessional statements recorded by them under section 67 are not admissible.

On behalf of respondent-State:

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner have admitted to have sold 3 kg opium to co-accused which is commercial in nature.

Learned State counsel has opposed the prayer made in the present petition but could not dispute the fact that no recovery has been effected from the conscious possession of the petitioner.

4. **Analysis and conclusion**

Admittedly, the recovery effected from other co-accused made the case of the prosecution doubtful and it was highly unlikely that a person collected opium in such a huge amount from an abandoned jungle adjoining his village.

As far as the contention of the learned State counsel with regard to the confession by the petitioner is concerned, this court fortify the judgment of the Apex court in Toofan Singh(supra) wherein it has been held that officers of the Central & State agencies appointed under Narcotic Drugs and Psychotropic Substances Act are police officers and therefore the confessional statements recorded by them under

section 67 are not admissible. Relevant para is reproduced herein below:-

“155. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.”

This Court would go little further to consider that a perusal of the final report qua the petitioner which stands presented dated 12.04.2024 states the confession of the petitioner wherein he has stated that “ *I have collected the recovered opium in tit bits from a nearby jungle adjoining my village where seldom anyone passes by and these opium plants are often found in the vicinity of that jungle*”

Considering the said principle alone, the Hon'ble Apex Court in the case of “**Rajkumar Hariram Gameti vs State of Gujrat 2008 (3) GLH 637**” has held that :-

“10. Thus, the position of law, as on date, is that any confessional statement made by an accused to an officer invested with the powers under Section 53 of the NDPS Act, is barred for the reason that such officers are ‘police officers’ within the meaning of Section 25 of the Evidence Act, a statement made by

an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

This Court is conscious of the fact that the petitioner in the instant case is a first time offender with no other case registered against him and has evidently been made a scape goat to save the skin of other co accused as by no stretch of imagination it is acceptable that 3 KG opium was plucked in small quantity on different occasions from the jungle premises which went unnoticed even by the people residing nearby.

In the present case, petitioner has already undergone incarceration for a period of 08 months and 13 days, challan stands presented on 12.04.2024, out of total 19 prosecution witnesses, none has been examined, charges are yet to be framed which is sufficient for this Court to infer that conclusion of trial shall take considerable time and no useful purpose would be served by keeping the petitioner behind bars for an indefinite period, which would also violate his right of speedy trial under Article 21 of the Constitution of India. A Division Bench of this Court in the case of “***Rajender Singh vs. State of Haryana***”, 2022(2) R.C.R. (Criminal) 85 has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal which is also in public interest primarily showing concern on a following view point.

“(a) the period of remand and pre-conviction detention should be as short as possible. In other

words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the learned Chief Judicial Magistrate/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.

(SANDEEP MOUDGIL)
JUDGE

24.09.2024
Poonam Negi

- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No