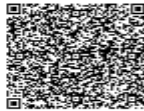


2024:PHHC:136505



209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48942-2024
DECIDED ON: 18.10.2024

VIKAS KUMAR @ VIKASH KUMARPETITIONER

VERSUS

STATE OF HARYANARESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P. S. Sekhon, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court under Section 439 Cr.P.C has been invoked for the grant of regular bail to the petitioner in case FIR No. 03, dated 02.01.2024, under Sections 18-B, 27-A and 29 of NDPS Act, 1985, registered at Police Station Sadar Fatehabad, District Fatehabad.

2. Facts:-

The facts as narrated in the FIR reads as under:-

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 tawa 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. 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 and Vikas 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 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 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. They have 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 and the recovery of 900 grams of opium has been falsely planted upon the accused. He further submits that he has no connection with the alleged recovery and was rather coming on foot from Agroha to Fatehabad in search of work.

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 900 grams of opium has been recovered from the present petitioner, therefore, does not deserve the concession of regular bail at this stage.

4. Analysis and conclusion

Admittedly, the recovery effected from the present petitioner i.e., 900 grams of opium is non-commercial in nature and moreover the case of the prosecution is highly doubtful as it is unlikely that a person collected opium in the

manner as alleged in the FIR from an abandoned jungle adjoining his village added with the fact that the petitioner has suffered incarceration of 9 months and 15 days and is not involved in any other case, wherein conclusion of trial shall take considerable time as out of 19 prosecution witnesses, none has been examined so far, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*.

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.

(SANDEEP MOUDGIL)
JUDGE

18.10.2024

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No