



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-52086-2024
DATE OF DECISION: 25.10.2024

NAVEEN KUMAR@SONU ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rakesh Nehra, Sr. Advocate with
Ms. Mehak Ghangas, Advocate for the petitioner(s).
Mr. S.S. Pannu, Addl. A.G, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 Bharatiya
Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner
in FIR No. 148 dated 22.05.2024 U/s 22 of NDPS Act registered at Police
Station Sadar, Rohtak.

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

*‘To the SHO, Police Station Sadar, Rohtak, Today I SI was
present in the police station when we received information from the
check post that a vehicle Innova No. HR-28G-0027 has been
stopped at Makdauli Khurd barricade, which might contain
narcotics. On this information I SI left for the spot and on the way,
I took NH-3 Incharge ESI Niranjana No. 1407 along with driver SI
Manjeet 1071, Rohtak with me to the spot where I met Incharge
EASI Surendra No. 1206/RTK, SPO Samudra, SPO Krishna, Dr.
Vikas Bhadwaj along with photographer Pradeep at the spot. The
driver of the Innova vehicle was found standing at the spot. When
asked for his name and address, the person told his name as Monu
S/O Shri Bhagwan resident Khidwali, to whom I SI had given a*



separate written notice under section 50 of NDPS Act. And after reading out the gist of the notice told that I SI Rakesh Kumar no. 260 is posted in Police Station Sadar, Rohtak and it is necessary to search your car Innova, hence you have right under section 50 NDPS that you can get yourself searched by a magistrate or a gazetted officer. You can be taken to them. On the notice the suspect Sonu S/O Shri Bhagwan above and the witnesses signed their respective signatures, and the person Sonu after reading the notice expressed his consent to get himself and his car searched by a gazetted officer, and the gazetted officer should be called at the spot. On the reply the person Sonu and the witnesses signed. That I SI from his mobile number 94163-05896 contacted the gazetted officer Shri Vidyanand HPS Deputy Superintendent, Rohtak on his mobile number 7082999104 and informed him about the situation and requested him to come to the spot. After some time, the gazetted officer Shri Vidyanand HPS Deputy Superintendent of Police Sadar Rohtak arrived at the spot. He informed his name and designation to all present there and as per the verbal orders of the gazetted officer, I SI was searched by ESI Niranjana No. 1407. No suspicious item was recovered from I SI which could be taken into police custody. The search report was prepared by the gazetted officer on which the person Sonu and the witnesses signed. On the directions of Shri Vidyanand HPS, I SI carried out the search of the person and his car Innova as per rules. A blue colour bag was found on the rear seat of the person's car Innova. When it was opened and checked, a total of 22 vials/bottles were found inside the bag. When checked, 19 vials/bottles of WIN CEREX COUGH SYRUP and 03 vials/bottles of ONAREX, OMERAX were found out of which 03 vials/bottles were found to be expired. All the vials/bottles are of 100 ML. I SI contacted Drug Inspector Mandeep Maan on his mobile no. 7404313222 and WhatsApped the photos of vials/bottles and after which he told that all these 19 vials/bottles are banned medicines. And comes under the purview of NDPS. Since he was out on official work, he said about submitting his report later. The recovered bottles containing WIN CEREX COUGH SYRUP, ONAREX and OMERAX, a total of 22



bottles, including blue colored bag was separately sealed in a white cloth and was stamped with his seal RK/05 and the gazetted officer also stamped his seal VN on the Pulanda. After using the seal, it was kept in his custody and I SI, after using his seal, handed it over to ESI Niranjan 1407. The vehicle Innova HR-28G-0027 and the pulanda bottle were taken into police possession as evidence. The accused and the witnesses signed the Fard. The Palanda and sample seal and the Fard were verified by the gazetted officer Shri Vidyanand and went away from the spot. The accused Sonu S/O Shri Bhagwan resident Khidwali has committed the crime under section 22 of NDPS Act by keeping 22 vials /bottles WIN CEREX ONAREX and OMERAX in his possession. So the tehrir was send to the police station through constable Manjeet no. 1071 for the registration for FIR and after registration of FIR the same is informed. Special report of the case should be sent to the officers. The investigating officer should be sent to the spot for further investigation. I SI along with my staff am present at the spot with the accused. Today, Makdauli Khurd bridge IB School Sd/ Rakesh SI Police Station Sadar Rohtak Date 22/05/2024, At 12:30 Am.'

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 and as per the allegations, the petitioner was found in possession of 19 vial/bottles of WIN CEREX COUGH SYRUP and 3 vials/bottles of ONAREX, OMERAX. He submits that the petitioner was an employee of Oscar Hospital, Rohtak and was carrying medicines for Oscar Medicos, Rohtak with bills and the same were purchased from HM Medicare. He has further argued that the antecedents of the petitioner are clean. He further submits that no fruitful purpose would be served by keeping the petitioner



behind the bars as conclusion of trial would take long time as out of total 17 Prosecution Witnesses, none has been examined so far.

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 5 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner has shown no licence for carrying such drugs 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 19.07.2024 and charges stands framed on 13.11.2024.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 5 month and 1 day, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, added with the fact that the petitioner was an employee of that hospital and not the owner or the managing person of that Medical store 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 19.07.2024 and charges stands framed on 13.11.2024, out of 17 prosecution witnesses, none has been examined so far 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail 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

25.10.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>