

2024:PHHC:145894



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54564-2024 (O&M)
DECIDED ON: 08.11.2024

RAKESH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lalit Kumar Narang, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-43453-2024

Application is allowed, as prayed for.

Exemption from filing certified copies of Annexures P-1 to P-3 is
granted and the same are taken on record with just exceptions.

CRM-M-54564-2024

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023, has been
invoked for the grant of regular bail to the petitioner in FIR No. 168, dated
25.04.2024, under Sections 21(b)(ii)(c) of NDPS Act, 1985 (Section 29 of NDPS
added later on), registered at Police Station Meham, District Rohtak.

2. Facts

Facts as narrated in the FIR reads as under:-

“The SHO, Police Station Meham, District Rohtak. Today, 1, ASI Anil Kumar 110 along with fellow employees HC Jitender 2103, EHC Rakesh 1444, EHC Sanjay 1163 with laptop printer riding on government vehicle HR 12GV 4965 the driver of which is ESI Rajesh 506/RTK were present on the Meham to Bhaini Bhairo road under the Rohtak to Hisar road flyover in search of intoxicant substance when a special informer met me the ASI and informed that Rakesh son of Mangali Ram resident Kamach Kheda District Jind and Sudhir son of Baljeet resident village Pharmana Khas, Meham District Rohtak, who deal in drug peddling and they are still looking to sell the contrabands, and they are coming on motorcycle no HR15D-3100 HF DELUX from Meham town to Bhaini Bhairo road. If a Nakabandi (blockade) is made in the middle of the road itself, then they can be caught. Out of them Rakesh is wearing a green T-shirt and light red pants and Sudhir is wearing a grey T-shirt and pigeon colour lower. If an immediate raid is made, then they can be caught along with the drugs. The information on being found to be true, reliable and trustworthy, I, ASI informed the fellow employee about the information and a notice 42 NDPS Act was prepared and a report was registered and sent through EHC Sanjay 1163 to Police Station Meham, District Rohtak to get the report registered in Rapat Roznamcha, and I, ASI along with my fellow employee reached the Meham- Bhaini Bhairo road near the Bharat Gas Agency Meham in a government vehicle and started the nakabandi. After a while, as per the information given by the informer, two young boys were seen coming on a motorcycle. The driver was wearing a green T-shirt and the boy sitting behind was wearing a grey T-shirt. The number of the motorcycle was seen to be HR15D-3100 and when the AS signaled him to stop, the driver started turning his motorcycle. Then, I, ASI, with the help of his fellow employees, apprehended the above said persons with motorcycle and asked about their names and addresses. The boy driving the motorcycle told his name as Rakesh son of Mangali Ram resident of Kamach Kheda district Jind and the boy sitting behind told his name as Sudhir son of Baljeet resident of village Pharmana Khas District Rohtak and he was holding a black polythene bag. The ASI gave them a separate written notice under section 50 of the NDPS Act and after reading the gist of the notice, told them that I, ASI Anil Kumar am posted in 110 ANC Staff Rohtak. I have information that you Rakesh son of Mangali Ram resident Kamach Kheda district Jind and Sudhir son of Baljeet resident village Pharmana Khas Meham district Rohtak have intoxicant substances in your possession, and I am sure that it is necessary to take your search. As per 50 NDPS Act, you have the legal right to get yourself searched through the nearest duty magistrate or any gazetted officer who can be called on

the spot or you can be taken to them. The suspects and the witnesses put their respective signatures on notice. The suspect Rakesh son of Mangali Ram resident Kamach Kheda District Jind, after understanding the gist of the notice replied to the notice 50 NDPS Act in his handwritten form that I Rakesh S/O Mangali Ram resident Kamach Kheda District Jind want to get myself searched through a gazetted officer who should be called on the spot and the suspect Rakesh and the witnesses signed the notice. Thereafter the suspect Sudhir son of Baljeet resident of village Pharmana Khas district Rohtak after understanding the gist of the notice well gave reply to notice 50 NDPS ACT in his own handwriting that I, Sudhir S/O Baljeet resident of Pharmana Bas District Rohtak want my search to be conducted through a gazetted officer who should be called put their respective signatures. Then, I, ASI through my mobile no. 9992024200 contacted gazetted officer Sandeep Kumar HPS Deputy Superintendent of Police, Meham District Rohtak on his mobile no. 7082999107 and informed him about the situation and requested him to come to the spot, who told that I am reaching the spot shortly. In the meanwhile EHC Sanjay 1163 after getting the report registered, came to the spot from Rohtak Police Station Meham, District Rohtak and presented the copy of the Report No. 23 dated 25.04.2024 and presented it to me the ASI. After some time, the gazetted officer Sandeep Kumar HPS Deputy Superintendent of Police Meham, District Rohtak came to the spot. He told his name and designation to everyone present on the spot and the search of ASI Anil Kumar 110/RTK was carried out by Sandeep Kumar HPS Deputy Superintendent of Police Meham, District Rohtak. During the search, ASI ANIL KUMAR 110/RTK but nothing such suspicious object was found which could be taken into possession as per the personal search. The personal search memo regarding non-recovery has been prepared. On which the suspects Rakesh and Sudhir and the witnesses put their respective signatures. Then the abovesaid Gazetted officer ordered to me the ASI orally to carry on the search of above suspect Rakesh and Sudhir. The search of abovesaid suspects Rakesh and Sudhir was carried out. During the search of suspect Sudhir son of Baljit resident of village Pharmana Khas, District Rohtak, a black colour polythene was found held in the hands of suspect Sudhir which was opened and checked before the gazetted officer then according to the experience of me the ASI the intoxicant substance 'Charas' was found in black colored polythene. Then, I, ASI took out the recovered Charas from the black polythene and when weighed it with the help of electronic weighing scale available with me, then total weight of the recovered Charas was 1 kg 30 grams. The recovered Charas was put in a separate white colored polythene and a separate bundle of white colored cloth was prepared and a separate bundle of white colored cloth was prepared for the black polythene. Then all bundles were sealed by putting my seal 'AK/\$' seal on them and a sample seal was prepared separately. Thereafter the search of accused Rakesh son of

Mangli Ram resident village Kamach Kheda district Jind was carried out as per the orders of gazetted officer Sandeep Kumar HPS Deputy Superintendent of Police Meham District Rohtak by me the ASI Anil Kumar 110/RTK during which a motorcycle no. HR15D-3100 brand HF DELUX colour black and red was recovered from the possession of suspect Rakesh. On checking it, the engine number of the motorcycle was found to be printed as HAIENHGD02984 and chassis number was MBLHAR201HGD02162. The seal after use was handed over to HC Jitender 2103. The recovered parcel of Charas, parcel of Black Polythene were also sealed by the Gazetted Officer Sandeep Kumar HPS, Deputy Superintendent of Police, Meham District Rohtak by affixing his one seal of his SK on each parcel and after use he kept the seal with himself. The parcel containing 1 kg 30 gram Charas, parcel of Black Polythene recovered from accused Sudhir and the recovered motorcycle no. HR15D-3100 HF DELUX was taken into police possession as evidence through recovery memo. The said accused Sudhir and Rakesh and the witnesses put their respective signatures on the memo and parcels, sample seal and the memo were verified by the Gazetted Officer Sandeep Kumar HPS, Deputy Superintendent of Police, Meham District Rohtak and he left the spot. The above said accused Sudhir son of Baljeet resident of village Pharmana Khas District Rohtak and accused Rakesh son of Mangli Ram resident of village Kamach Kheda District Jind have committed the offence under section 20 (b) (ii) (C) of NDPS Act by keeping 1 kg 30 grams of Charas in their possession. Upon which the present description is sent to the police station through EHC Sanjay 1163 for the registration of case. After registration of case, the case number be informed and the special report of the present case be sent to senior officer. Investigation officer be sent to the spot for further investigation.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner contends that the contraband involved in the instant FIR is marginally over and above the commercial quantity i.e. 1 Kg 30 grams of *charas*. He further contends that the petitioner has been falsely implicated in the instant FIR, as he is not the owner of the vehicle, which was recovered by the police and he was not having any personal knowledge with regard to the contraband being carried out by the co-accused from whom recovery was effected.

On behalf of the 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 provision of Section 37 of NDPS Act not satisfied by the petitioner and recovery had been in combined made from the petitioner and cannot be separated.

4. Analysis

Be that as it may, considering the custody period suffered by the petitioner i.e. 06 months and 12 days and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents; the contraband i.e. 1 Kg 30 gms of charas, is marginally over and above the commercial quantity in addition to the fact that the investigation is complete, challan stands presented to Court on 19.10.2024, charges have been framed on 07.11.2024 and out of total 17 prosecution witnesses none has been examined so far, 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.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus

State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023.

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 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.

08.11.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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