



CRM-M-59624-2024
DECIDED ON: 03.12.2024

...PETITIONER

.....RESPONDENT

Mr. J.S. Rattu, DAG, Punjab.

“Station House Officer, Police Station City Khanna, Jai Hind, Today myself ASI along with ASI Harinder Singh 345/Khanna, ASI Parminder Kumar 613/Khanna, HC Amarinder Singh 491/Khanna in private car by carrying laptop-printer were patrolling and checking over suspicious persons were present at Priston Mall, within the boundary of Near Guru Nanak Computer Kanda, Main GT Road Khanna. Around 09:30AM,

we spotted a swift car colour white, roof black from the Mandi Gobindgarh Road side on the slip road. On the basis of suspicion signalled the above car to stop. On seeing the police party driver of the car slowed the car, then very cleverly tried to ran away, then myself ASI with the help of police party blocked the barricade and stopped the car. Its registration No. is DL5CK7066 marka swift colour white roof black. Above numbered car parked on side lane. Two haircut persons were seated in it. Then myself ASI on the basis of suspicion with the help of co-officials got alighted both the haircut persons from car and asked their name and address, then car driver told his name Parth sharma s/o Ashwani Kumar r/o village Charwal, near High School, Police Station Gaajbag, District Kathua, Jammu Kashmir and second haircut person who seated on conductor seat told his name Mannat Sharma s/o Vijay Kumar Sharma r/o House No.43, Ward No.7, Near Wine Shop Lakhanpur, Police Station Lakhanpur, District Kathua, Jammu Kashmir. Myself ASI introduced myself to them that 'I ASI Shamsheer Singh NO. 463/Khanna Police Station City Khanna is deputed as Investigating Officer. Me and my co-officials are in uniform, my name plate is attached. I have a suspicion that you might have some intoxicant substance. For this, you and your car has to be searched, but you have a right to get yourself and your above numbered car can be search through a gazetted officer or in the presence of Magistrate. They can be called on the spot, or you may be escorted to them.'" On this, both the accused persons in one voice said we have full faith on you, you can check ourselves and our car bearing No. DL-5CK- 7066 marka Swift. Then myself ASI asked above accused persons that what is your qualification'; then accused Parth Sharma told that 'I am 12th standard pass' and accused Mannat Sharma told 'I studied upto B-Com'. Separate memo of consent were recorded. Both the accused persons appended their signatures on their respective memos which were testified by the witnesses.

Then myself ASI searched both the young person Parth Sharma and Mannat Sharma, but nothing objectionable found from them. Then above car No. DL5CK7066 marka Swift was searched as per procedure, then beneath the car seats one weighty transparent envelope was found. Therefore, myself ASI tried to incorporate public witness, but everybody revealed their compulsions and denied to join. Then myself ASI picked up the transparent envelope beneath car seat, on opening it; 10 vials were found. Out of which 8 vials marked as COREXS Cough Syrup, Triprolidine, Hydrochloride & Codeine phosphate, weight 100 ML mfg. No. MNB/06/421, Batch No. TBHQ0842, MEG Date 08/2023 and Expiry Date- 7/2025 were recovered and 2 vials marked as ASCORIL-C Cough Syrup, Codeine Phosphate and Chlorpheniramine Maleate weight MI 120 Mfg. No. MNB/05/182, Batch No. 05220591, mg date MAR 2022 and expiry date FEB/2024. Therefore, the 10 vials of cough AR R syrup were put into one bag and its parcel was prepared. Parcel was seal stamped by myself ASI with initials SS. Sample seal stamp SS was prepared separately. After the usage of stamp, to ASI Harwinder Singh it was handed over 345/Khanna. Case properties; 10 vials of cough syrup stamped with SS, sample stamp initials SS and DL-5CK7066 marka Swift colour white roof black were taken into police custody. Accused Parth Sharma and Mannat Sharma appended their signatures on memo, testified by the witnesses. Above accused persons by keeping 10 cough syrup committed offences punishable under Section 22-61-85 NDPS Act. On which ruga for the registration of case FIR against accused Parth Sharma and Mannat Sharma has been written and sent by hand ASI Parminder Kumar 613/Khanna to Police Station. After the registration of case FIR, its number be obtained from the case file. Special reports be issued and sent to the service of Senior Officers. Myself ASI along with co-officials are indulged in

investigation. Sd/- Shamsher Singh ASI, Police Station City Khanna dated 23.09.2023.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story 8 bottles Corexs Cough Syrup containing salt Triprolidine Hydrochloride & Codeine Phosphate of 100 ml and 2 bottles of Ascoril-C Cough Syrup containing salt Codeine Phosphate and Chlorpheniramine Maleate of 120 ml were recovered underneath the driver seat of the car, which was being driven by co-accused Parth Sharma, who has already been granted the concession of regular bail by this Court vide order dated 21.11.2024 passed in CRM-M-42817-2024 (Annexure P-1-A). He further contends that the petitioner is neither the owner of the vehicle in question i.e. DL5CK-7066 marka Swift nor was driving the said vehicle.

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 quantity of recovered contraband falls under the commercial quantity.

4. **Analysis**

Be that as it may, considering the fact that the co-accused has been granted the concession of regular bail by this Court vide order dated 21.11.2024 (Annexure P-1-A) added with the facts that the petitioner is neither the owner of the vehicle in question i.e. DL5CK-7066 marka Swift nor was driving the said vehicle; as he is not involved in any other case, as is evident from custody certificate in addition to the fact that after framing of

charges on 30.07.2024; out of total 14 prosecution witnesses, 02 witnesses have been examined and 02 witnesses have been given up so far, which is suffice for this Court to infer that the conclusion of trial will take 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.

(SANDEEP MOUDGIL)
JUDGE

03.12.2024

sham

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No