

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

230

CRM-M-59235-2024
DATE OF DECISION: 03.12.2024RAJESH KUMAR @ RAJESH YADAV
...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

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 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 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. 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 no recovery has been effected from him. He submits that the petitioner seeks parity with the co-accused Vikas Kumar @ Vikash Kumar who has already



been granted concession of regular bail by this Court vide order dated 18.10.2024 passed in CRM-M-48942-2024 and the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, therefore, prays for grant of regular bail to the petitioner.

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 10 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected from the possession of the petitioner and co-accused is commercial in nature but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 10 months and 23 days, similarly situated co-accused has already been granted concession of bail by this Court, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 12.04.2024 charges stands framed on 10.10.2024 out of 19 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 therefore,



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

03.12.2024
anuradha

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