



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61895-2024
DECIDED ON: 16.12.2024

AMIT AGGARWAL

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amarsh Dudeja, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.275, dated 09.09.2023, under Sections 22-C, 29 of the NDPS Act, registered at Police Station Kalka, District Panchkula (Haryana).

2. Prosecution story setup in the present case as per the version in the FIR as under:-

The brief circumstances of the case are as follows that To, SHO Sir, Kalka, Jai Hind, it is requested that on 9.9.2023 1 police official ASI Anil Kumai 46 Panchkula along with police official Parwinder Singh 86/Panchkula, Sandeep Kumar 3/Panchkula, Sohan Lal 774/Panchkula, on government vehicle bearing no. HR03GV 5134 who was driven by Home Guard Gurdeep Singh, during patrolling and for prevention of crime were present near Railway Station Kalka around 3:20 PM that secret informer mel me and told that Amit son of Mohan Lal resident of Gandhi Chowk, Kalka is selling intoxicant tablets. And on earlier occasion also Panchkula Police had filed a case for selling Heroin and again today he is in the wait to sell intoxicant tablets to customer near

Paploha Road, near Railway Crossing, Railway Colony and is wearing blue jeans and white blue checked shirt. If immediately the raid is conducted then Amit can be caught red handed with huge number of intoxicating tablets. Information seemed to be reliable and genuine. On which after ruqa was send through Sandeep Kumar 3/Panchkula for registering rapat to Police Station Kalka around 3:30 PM. Thereafter I ASI send notice under Section 42 NDPS Act to office of Assistant Commissioner of Police, Kalka through police official Parvinder Singh 86/Panchkula al 3:40 PM. Thereafter I along with other official Sohan Lal 774/Panchkula on government vehicle number HR03GV 5134 who was driven by Home Guard Gurdeep Singh 6768 along with secret informer went to Paploha Road, Near Railway Crossing, Railway Colony. I ASI along with other officials and secret informer reached on private vehicle around 3:55 PM near Army Gate, Paploha road Kalka. At around 4:00 PM police official Parvinder Singh 86/Panchkula got seen the notice under Section 42 NDPS Act from office of Sh. Ramkumar HPS ACP Kalka and notice under Section 42 NDPS Act was given to me ASI. It was kept by me. I removed red and blue light of government car I along with other officials and secret informer reached Army Gate, Paploha Road and reached army area near second gate. After sometime around 4:05 PM one person wearing Blue Jeans Pants and white and blue check shirt was camying red color bag in his right hand was seen standing near Bushes near Railway Colony. Thereafter secret informer told ASI that person standing in front is Amit Aggarwal. Thereafter secret informer was told to leave and then I ASI along with other officials on government vehicle reached Army area and around 50 metres back from second TAN LAL HI CHOWK, ACT, 29-61-85 PANCHKULA) gate of Army Area stopped our car and got out and then along with Parvinder Singh and Sohan Lal started walking towards Amit Agarwal and suddenly on seeing us, he started running towards Railway Colony. Then I along with police official Parvinder Singh and Sohan Lal rounded up after 10 meter chase at around 4:10 PM and then asked about his name. He told me that he is Amit Agarwal son of late Mohan Lal Agarwal resident of House No. 87/1, Punjabi Dhaba Gandhi Chowk Kalka, Police Station Kalka District Panchkula aged 44 years. Then I ASI told him that I Anil Kumar ASI 46/Panchkula is posted at Anti Narcotic Cell, Panchkula. I have secret information that you are in possession of Intoxicating tablets. In this regard we need to search you. You have legal right that you get searched from Gazzetted officer or Magistrate. Then I ASI separately gave notice under Section 50

NDPS Act to Amit Aggarwal. Then suspect Amit Aggarwal after reading notice under Section 50 NDPS Act and understanding the same gave consent in written to be searched from some gazetted officer and wrote 'I want to get my search conducted from Gazetted officer.' Thereafter separate consent memo was prepared. On the memo suspect Amit Aggarwal and witnesses Parvinder Singh 86/Panchkula and Sohan Lal 774/Panchkula signed. Then I ASI from my mobile no. 9416736600 called Sh. Parveen Kapil AETO Excise Panchkula and Nodal Officer NDPS Act Area Police Station Kalka on his mobile no. 8968844399 around 4:21 PM and requested him to come at the place of occurrence Paploha Road, Near Railway Crossing, Railway Colony. Thereafter at around 4:34 PM I ASI from my mobile no, requested Mr. Praveen Kumar Drug Control Officer, Panchkula by calling on his mobile no. 8685036908 to come to the spot. At around 4:40 PM, Sandeep Kumar 3/Panchkula Police Station Kalka got registered Rapat and came present on the spot and then handed over copy of Rapat No.13 dated 9.9.2023 at 4:17 PM to Police Station Kalka. Then was kept by me. Then around 5:35 PM, Mr. Praveen Kapil, AETO, Excise Panchkula Nodal Officer, NDPS Act Area Police Station Kalka informed about the situation and also produced the suspect Amit Agarwal in front of him. Mr. Praveen Kapil after knowing the current scenario introduced himself to suspect Amit Aggarwal that I am Praveen Kapil, METO, Excise Panchkula and I am working as Nodal Officer, NDPS Act, Police Station Kalka. There is secret information that you are in possession of intoxicant tablets. In this connection you need to be searched. You have legal right to get yourself searched by a Magistrate or a gazetted officer. On which suspect Amit Agarwal told Mr. Praveen Kapil that I have already given my consent in writing to the police to get my search done by a gazetted officer. Mr. Praveen Kapil carried out the search of Sh. Praveen Kapil ATO Excise Panchkula and upon his instructions I carried out the search of fellow employees Mr. Parvinder Singh and Sohan Lal. Apart from essential items, no intoxicants or suspicious items were recovered from them. Further, Search Memo and recovery memo were prepared separately. On which witnesses signed and suspect put his signatures and also memos were verified by Sh. Praveen Kapil AETO Excise Panchkula. At this time around 5:55 PM, Sh. Praveen Kumar. Drug Control Officer, Panchkula reached the spot on his private car. He was also informed about the situation and upon the instructions of Sh. Praveen Kapil I ASI opened the red colored carry bag in the hand of suspect Amit Agarwal and found large quantity of strips of green colored tablets

inside the carry bag and were taken out from the carry bag in the presence of Nodal Officer, NDPS Act and the green colored strips were counted. Further, there were total 20 strips and each strip had 60 tablets. Further, the strips of recovered tablets were checked. Out of which 4 strips of intoxicating tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG whose batch no. 03L23028 MFG.5/2023 or EXP 04/2026 was written and rest 16 strips of intoxicating tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG whose batch no. 03L23001 written as MFG.2/2023 or EXP 01/2026 were found. And about the same, Sh. Praveen Kumar Drug Control Officer Panchkula present on the spot was informed about the scenario and then written application was given to him to give his opinion about the tablets recovered. Sh. Praveen Kumar Drug Control Officer's instructions, I ASI who got recovered the tablets, took out 5 tablets from the strip of DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG, batch no. 03L23001 MFG.2/2023 or EXP 01/2026, and weighed the same in Electronic Scale. Total Weight came out to be 0.30 grams. The live tablets that were taken out were pasted on the same strip with cello tape that were kept in investigation kit. Upon which Sh. Praveen Kumar Drug Control Officer, Panchkula gave his written opinion to ASI ANIL KUMAR. 46/PKL, ANTI NARCOTIC CELL PANCHKULA SUBJECT: DETAIL OF NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES IN ALLOPATHIC DRUGS RECOVERED FROM AMIT AGGARWAL S/O LATE. SH. MOHAN LAL PERMANENT R/O H.NO.-87/1, PUNJABI DHABA K PICHHE GANDHI CHOWK, RAILWAY ROAD KALKA PANCHKULA. SR. NO.(A) SR. NO. AS PER NDPS ACT 1985, 44 LOMOTIL TABLETS AS PER LABEL CLAIM CONTAINING DIPHENOXYLATE HYDROCHLORIDE 2.5 MG TABLETS AS ACTIVE INGREDIENT 960 TABLETS BATCH NO. 03123001 M/D 02/2023 E/D 01/2026 QUANTITY 25.45/20 TABLETS MANUFACTURED BY RPG LIFE SCIENCES LIMITED, 3102/A, G.I.D.C ESTATE ANKLESHWAR-393002, DISTT BHARUCH, GUJRAT INDIA WEIGHT OF TABLETS 57.60 GM OF 960 TABLETS AND SR. NO. 4) SR. NO. AS PER NDPS ACT 1985, 44 LOMOTIL TABLETS PER LABEL CLAIM CONTAINING DIPHENOXYLATE HYDROCHLORIDE 2.5 MG TABLETS ACTIVE INGREDIENT 240 TABLETS BATCH NO. 03123028 M/D 05/2023 E/D 04/2026 QUANTITY 25.45/20 TABLETS MANUFACTURED BY RPG LIFE SCIENCES LIMITED, 3102/A, G.I.D.C

ESTATE,ANKLESHWAR-393002,DISTT BHARUCH, GUJRAT INDIA. WEIGHT OF TABLETS 14.40 GM OF 240 TABLETS. AS PER LABEL CLAIM THE DRUGS MENTIONED AT SERIAL NO. A BARE COVERED UNDER NDPS ACT AT SERIAL NO. 44. TOTA WEIGHT 72 GRAMS AND handed over to me. Further same was verified by AETO Excise Panchkula. After giving the opinion, Sh. Praveen Kumar Drug Control Officer went away from the spot. According to the opinion Intoxicant tablets when identified separate identification memo was prepared. Thercafter the same was signed by witnesses and accused and memo was attested by Sh. Praveen Kapil AETO Excise Panchkula. Out of the recovered material, 4 strips Intoxicating Tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG BATCH NO. 03L23028 MFG .5/2023 AND EXPIRY 04/2026 were put in one white cloth carry bag and parcel was prepared and was marked as parcel-1 and other recovered 16 strips of Intoxicating tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG BATCH NO. 03L23001 MFG.2/2023 AND EXPIRY 01/2026 were put in red coloured carry bag then put in white colored cloth carry bag and then was marked as Parcel-2 and both were parcels were separately prepared and then the parcels were attested and put mark AK/3-3 by ASI and Sh. Praveen Kapil AETO Excise Panchkula also put his seal KP/1-1 and sample seals were separately prepared and then I ASI my seal AK/1-1 and Sh. Praveen Kapil AETO Excise Panchkula affixed sample seal KP/I-1. Then after affixing my seal, I handed over my scal to Sohan Lal/774 Panchkula and Sh. Praveen Kapil AETO Excise Panchkula kept his seal with himself. Accused Amit Agarwal clothes were searched and then from the right pocket of his jeans pant one mobile phone Mark MI blue color was recovered having SIM number 9817257562 and from the left side of the pocket notice under Section SO NDPS Act and Rs.240/- Indian Currency notes were recovered. Further separate personal search memo was prepared. Further accused and witnesses signed on this memo. Further the notice under section 50 NDPS Act and personal search notice was verified by Sh. Praveen Kapil, AETO Excise Panchkula. Further parcel mark-l, seal AK/3, KP/1, which contained 4 strips of Intoxicating Tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG BATCH NO. 03L23028 MFG 5/2023 AND EXPIRY 04/2026 (total 240 tablets) weighing 14.40 gram and sample seal and parcel - 2 with seals AK/3. KP/1 which contained one red colored carry bag and the same contained 16 Strips of

Intoxicating Tablets DIPHENOXYLATE HYDROCHLORIDE 2.5 MG ATROPINE SULPHATE TABLETS IP 0.025 MG BATCH NO. 03L23001 MFG 2/2023 AND EXPIRY 01/2026 (960 tablets) weighing 57.60 along with sample seal and accused Amit Agarwal and one mobile phone Mark MI blue color was recovered having SIM number 9817257562 and Rs.240/- Indian Currency notes were taken into police possession by preparing memo. On the recovery memo accused and witnesses affixed their signatures. Further Memo was separately attested by Sh. Praveen Kapil AETO Excise Panchkula and then Sh. Praveen Kapil AETO Excise Panchkula went in his private car from there. Then from accused Amit Agarwal was asked about license or permit about the intoxicants tablets in his possession. Further, he could not produce any license or permit with regard to the same. Accused Amit Aggarwal have committed offence under Section 22C-61-85 NDPS Act by keeping in his possession Intoxicant Tablets Diphenoxylate Hydrochloride Atropine Sulphate Tablets IP Lomotil Total 20 Strips containing 1200 Tablets (weight of the same is 72 grams) and same without any valid license or permit. Upon my instructions the same was written on laptop and print was taken out and HGH Gurdeep Singh 6768 was sent and was sent to Police Station Kalka. Further special reports be generated and number be registered and sent to police officials for their perusal. Today present near Railway Crossing Paploha Road, Railway Colony, Kalka LAT- 30.842019 LONG-76.932896 ASI Anil Kumar 46/Anti Narcotic Cell Panchkula Dated 9.9.2023 Time 8:50 PM and case was registered NO. 275 dated 9.9.2023 under Section 22C-, 61-85, NDPS Act, PS Kalka and then thereafter formal police proceedings.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, 1200 Lomotil tablets were recovered from the possession of the petitioner, which is marginally over and above the commercial quantity. He further contends that the petitioner has been falsely implicated in the present case as no recovery has been effected from him. It has been contended on behalf of the petitioner that he is involved in another case

bearing FIR No.133/2019, under Sections 21, 61 of NDPS Act, registered at Police Station Kalka, Panchkula, wherein he is on bail. He further asserts that the petitioner is in custody since 12.09.2023 and challan stands presented to Court on 16.02.2024.

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 alleged contraband i.e. 1200 Lomotil tablets weighing 72 grams, was recovered from the present petitioner, which falls under the commercial quantity.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 03 months and 05 days for which the petitioner has suffered incarceration and the fact that the alleged contraband i.e. 1200 Lomotil tablets weighing 72 grams, is marginally over and above the commercial quantity in addition to the fact that investigation is complete, challan stands presented to Court on 16.02.2024, charges have been framed on 16.10.2024 and out of total 19 prosecution witnesses, only 01 witness has been examined 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

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.

16.12.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*