



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

240

CRM-M-723-2025
DATE OF DECISION: 16.01.2025

RAJAT

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Sawhney, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

This petition has been filed under Section 483 of BNS for grant of regular bail in FIR No. 44 dated 05.03.2024 under Sections 20(b)(ii)(C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 and (Section 29 of The NDPS Act and Section 201 IPC added later on) registered at P.S. Station Kosli, District Rewari.

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

‘To, SHO Police Station Kosli Jai Hind, Today on 05.03.2024, myself SI along with PSI Anil Kumar, Head Const. Naseeb no. 1089/Rewari, along with HC Bhupender Singh No. 1083/Rewari, SI Vikas No.31/Rewari on an official vehicle PCR-16 bearing number HR-36GV-9417 driver thereof was Jitendra HKRN were present near tehsil Kosli for patrolling and investigation. In the meanwhile, special informer came to myself SI and informed that two persons are traveling in a vehicle bearing no. HR-90A-9434 make Maruti Suzuki Ertiga painted in white colour and they are planning to sell intoxicating substance to somecne, who are



currently standing on the side of the road at Kosli by-pass. If raid is conducted immediately, then they could be nabbed along with the intoxicating substances. Considering this information as true, informed the fellow employees about the information, prepared notice under section 42 of the NOPS ACT, and sent the same to the police station by hand through Const. Vikash no: 31 to get it recorded in the Rapat Roznamcha and to inform about the same to higher officials. Thereafter, myself SI along with the team, reached at the place of occurrence as disclosed by the secret informer and two persons were found sitting inside the vehicle bearing number HR-90A-9434 while parking the vehicle on the side of the road at Kosli by-pass turn, who on seeing the police party, tried to run away along with their vehicle, then myself SI with the help of fellow officials arrested both the persons along with their vehicle, and asked for their names and addresses, the driver of the vehicle disclosed his name as Rajat son of Dalbir resident of Khatkad Patti, Nagura police station, Alewa, District Jind. And when asked for the name and address of the person sitting on the seat next to the driver's side seat, he disclosed his name as Kailash Dalal son of Vijay Singh, resident of Jagram Patti Nagura, Police station Alewa district Jind, who was keeping a white colored plastic polythene in his ap. Separate notices under section 50 NDPS ACT were given to the above two persons. Both of the accused Rajat and Kailash Dalal were informed that we are having solid information that you have some intoxicating substances in your possession. And you both have a legal right to get yourself and your vehicle searched through a Gazetted Officer or through some Duty Magistrate at the spot or we can produce you before them. Accused Rajat and Kailash Dalal got prepared their reply to the notice under section 50 NDPS Act separately that we want to get ourselves and our vehicle searched through a Gazetted Officer Magistrate after calling them or some Duty the spot. Thereafter, the above said accused Rajat, Kailash Dalal and other witnesses appended their respective signatures over the notice, after which, the appointed Duty Magistrate SH. Jai Singh HPS Deputy Superintendent of Police Kosli was contacted on his mobile no.



7056666102 through the mobile no. 9466678444 of myself SI and informed him about the situation at the spot and requested him to come to the spot. After waiting, Sh. Jai Singh HPS Deputy Superintendent of Police Kosli arrived at the spot and at the same time, Const. Vikash no. 31 reached at the spot after giving notice under section 42 of NDPS Act at police station Kosli. Duty Magistrate Sahib, after knowing the circumstances, conducted my personal search and prepared the memo of search and myself SI was not found to be in possession of any intoxicant or illegal object. I along with above said accused Rajat and Kailash Dalal and other witnesses appended our signatures over the above said memo. There are many people present at the spot who were asked to become a public witness, then Omprakash son of Dulichand resident of street Mohalla Kosli, expressed his desire to become a public witness on his own free will, after that, as per the orders issued by the Duty Magistrate Jai Singh HPS Deputy Superintendent of Police Kosli, myself SI got conducted the personal search of above said accused Rajat and Kailash Dalal and their vehicle as per rules in the presence of the above said witnesses, during the search, intoxicating substance Sulfa (charas/Hashish), was found in a plastic polythene colored yellow lying in the lap of the above mentioned accused Kailash Dalal. When accused Rajat and Kailash Dalal were asked about this, they told that this intoxicating substance is Sulfa (charas/Hashish), which was weighed with an electronic weighing machine and the total weight of Sulfa (charas/Hashish) along with plastic polythene came out to be 1 Kilogram and 100 grams. Whose cloth parcel was prepared, the parcel was stamped with 3 stamps bearing impression AK and the stamp after use was handed over to witness HC Naseeb No: 1089/Rewari for sample. Duty Magistrate Sahib appended his one stamp bearing impression NS over the parcel and the stamp after use was kept by him. Cloth Parcel containing Sulfa (Charas/Hashish) and vehicle bearing number HR-90A-9434 were taken into police custody vide a separate memo of recovery as evidence. Memo and cloth parcel containing Sulfa (Charas/Hashish) were attested by Duty Magistrate Sahib. Memo



was signed by the accused Rajat and Kailash Dalal and witness Om Parkash. Above said accused Rajat and Kailash Dalal, have committed the offences under section 20b (ii) C 61-85 of NDPS Act by keeping total 1 Kilogram and 100 grams of Sulfa (Charas/Hashish) intoxicating substance in their possession. Therefore, the writing is being sent to the police station by hand through Const. Vikash no: registration of FIR. Special report of the FIR be issued in the service of higher officials and Ilaga Magistrate Sahib rules. per as After registration of FIR, its number be informed and other competent IO be sent at the spot. Today within the area of By-pass Kosli Turn Sd/- Ramchandra SI Police Station Kosli, Dated 05.03.2024.'

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 as no recovery has been effected from him rather he was not present in the alleged vehicle. He contends that the contraband involved in the instant FIR is marginally over and above the commercial quantity i.e. 1100 grams of Charas. He further argued that the investigation has already been completed and the challan has been presented to Court on 01.06.2024 and no useful purpose would be served by detaining him behind the bar as the conclusion of trial would take sufficient long time, therefore, he be admitted to regular bail. He has further argued that the antecedents of the petitioner are clean, meaning thereby, he is not habitual offender.

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 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner along with co-accused Kailash was apprehended on spot and 1 kg. 100 gram Charas was recovered from them which is a commercial quantity but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, considering the custody period i.e.10 months and 10 days for which the petitioner has suffered incarceration; the contraband i.e. 1100 grams of Charas, is marginally over and above the commercial quantity in addition to the fact that antecedents of the petitioner are clean, investigation is complete, challan stands presented to Court on 01.06.2024, charges have been framed on 07.12.2024 and out of total 23 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 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

16.01.2025
anuradha

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