



224

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-7207-2025
DATE OF DECISION: 13.02.2025**

GURPREET @ GOLU ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ishan Dogra, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of the BNSS, 2023 seeking the concession of regular bail for the petitioner in FIR No.226 dated 19.09.2023 under Sections 22(C), 29, 61 and 85 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sector 9, Ambala City, Haryana.

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

‘Copy of the written information is as under:- To the S.H.O. Police Station, Sector-9, Ambala City. Jai Hind. Sir, today, on dated 19.09.2023, I, SI along with EASI Sahab Singh No. 166/AMB, EHC-Rajesh Kumar No. 727, ASI Suraj Bhan No. 180, Constable-Narender Kumar No.1459, Constable Amarjeet Singh NO.969, with Govt. Vehicle No. HR01GV-8901, its Driver SPO Balwan Singh NO.95 and with Laptop and Printer and investigation bag, was going in connection with patrolling and checking of crime at time about 12.15 P.M. by going from Anti Narcotic Cell, Ambala, via



area of Police Station, Mahesh Nagar, Capital Chowk, Ambala Cantt, area of police station, Baldev Nagar, area of Police Station, Ambala City, area of Police Station, Sector-09, Ambala and at time about 7.15 P.M., I was present near Police D.A.V. School, Ambala City. Then the special informer met me and gave information to myself SI that Gurpreet Alias Golu son of Sh. Darshan, resident of Village Ghel, Police Station Sadar, Ambala, District Ambala, who is wearing Kurta-Pajama (trouser) of white colour and he has a Pithu Bag (Backpack Bag) of black colour and having strips of white colour on it, in which, intoxicated capsules of blue colour are available in heavy quantity and he is in opportunity to sell the same. After sometime, he will come on foot from the side of Galaxy Mall, Sector-7, Ambala City towards Community Centre, Sector-7, Ambala City. If barricades are deployed near Community Centre, Sector-7, Ambala City, then the above said Gurpreet can be overpowered along with bag filled with intoxicated capsules. The information is solid and reliable. Upon this, for informing about this information, one information letter was sent to you by hand through C-Narender Kumar No. 1459, at Police Station Sector 9 Ambala and after preparing notice u/s 42 of NDPS Act the same was sent by myself SI by hand through ASI Suraj Bhan No. 180 to Sh. Ramesh Kumar, HPS/ DSP HQ Ambala at his residence at Police Line Chowk Ambala City for information. Thereafter, I, SI said to the passengers coming and going from there to join in the raiding party after telling them about facts of the information. But, all the persons were gone from the spot after telling their justified helplessness. Upon this, I, SI with the help of co-officials and along with the special informer, reached near Community Centre, Sector-7, Ambala City and set up barricades here and there, I also told the circumstances to the passengers coming and going from there and requested them to join in the raiding party. Upon this, all the persons were gone away from the spot by telling their justified helplessness. After sometime, one young boy, wearing kurta-pajama (trousers) of white colour was seen coming on foot having a pithu back on his back from the side of Galaxy Mall, Sector-7, Ambala City. On giving hint by the special informer I, SI, overpowered him with the help of co-officials and asked his name and address and upon inquiry, he told his name as Gurpreet Alias Golu Son of Sh. Darshan, resident of Village Bari Ghel, Police Station Sadar, Ambala District Ambala. Thereafter, I, SI, said to the above said Gurpreet that I have information of having intoxicated capsules in



the backpack bag on your back of grey and black colour and you have legal right that you can get the search of your bag from any Magistrate or any Gazetted officer. Upon this, Notice U/s 50 of NDPS was prepared separately. After reading the notice, the accused put his signatures and witness put signatures. In the reply to the Notice U/s 50 of NDPS Act, the above said Gurpreet gave his written consent for getting the search conducted in the ence of any Gazetted Officer and on the memo of presence consent prepared by myself SI, the above said Gurpreet and witness put their respective signatures. Thereafter, I, SI, from my Mobile Phone Number 9416175024, informed about the circumstances to Sh. Ramesh Kumar HPS/DSP HQ Ambala on his Mobile Phone Number 9729990102 at time 07.50 P.M. and requested him to reach at the spot. Sh. Ramesh Kumar HPS/DSP came at the spot after sometime along with his Govt. Vehicle and staff. I, SI, told him about the circumstances till now and presented Notice U/s 50 NDPS Act, Memo of Consent and the above said accused Gurpreet before him. Sh. Ramesh Kumar HPS/DSP saw the above said Notice U/s 50 of NDPS Act and Memo of consent and Sh. Ramesh Kumar HPS/DSP conducted my personal search as per the procedure regarding the above said information and on the instructions of Sh. Ramesh Kumar HPS/DSP, personal search of co-officials EASI Sahab Singh No. 166/AMB, EHC Rajesh Kumar No.727, C-Amarjeet Singh No. 969 and Driver SP Balwan Singh No. 95, were conducted by myself SI. No objectionable maternal was found from all the above said co-officials except the daily use items. Upon this, Memo of Personal Search was prepared separately by Sh. Ramesh Kumar HPS/DSP, on which, witnesses put their respective signatures. At this time, ASI Suraj Bhan NO.180, after giving notice u/s 42 of NDPS Act, was come back and he entrusted me the Notice U/s 42 of NDPS Act, duly seen by Sh. Ramesh Kumar, HPS/DSP. Thereafter, Sh. Ramesh Kumar HPS/DSP said to the above said accused Gurpreet that I, Sh. Ramesh Kumar HPS/DSP HQ Ambala and I am a Gazetted Officer and Sh. Ramesh Kumar HPS/DSP gave instructions to me to conduct the search of the backpack bag hanging on the back of the above said Gurpreet, in his presence. Upon this, I, SI, conducted search of the backpack bag hanging on the back of the above said Gurpreet as per the procedure. Upon conducting the search and on checking the backpack bag of the above said accused Gurpreet, 339 strips, in which, each strip was containing 8 Capsules and in total 2712 intoxicated capsules of NRx Dicyclomine Hydrochloride



Tramadol Hydrochloride Acetaminophen Capsules Spasmaxx B. No. VLAC23 Mfg. Date 02/2023, Expiry Date 01/2025, have been recovered and on weighing the same with the weighing machine, the weight of one strip, containing 8 Capsules, was found as 6.04 Grams along with the weight of the strip and it was found as 4.41 Grams of 8 Capsules of Spasmaxx without strip and the weight of the vacant strip was found as 1.65 Grams and the weight of one capsule of Spasmaxx was found as 0.54 Grams. In this way, the weight of total 2712 capsules without strip was found as 1464.48 Grams. Opinion has to be taken from Sh. Hemant Grover, Drugs Controller Officer, Ambala regarding the recovered capsules. I, SI, from my mobile No: 9416175024, contacted Sh. Hemant Grover, Drugs Controller Officer, Ambala on his Mobile No: 9416404475. Sh. Hemant Grover, Drugs Controller Officer, Ambala said to me to send photograph of the recovered capsules alongwith Make printed on the these on his Whatsapp along with written application for opinion. I, SI, sent photographs along with Manufacture details printed on the strip of recovered intoxicated capsules and written application on his whatsapp number. After sometime, Sh. Hemant Grover, Drugs Controller Officer, Ambala sent his report regarding the recovered intoxicated capsules on my Whatsapp Number, which is as under: "Opinion:- The above mentioned drug contains "Tramadol which falls under NDPS category at Sr. No.238-ZH of NDPS Act". At this time, Constable Narinder Kumar No. 1459, after giving information to the police station, Sector-09, Ambala, was come back and he entrusted Rapat No. 35 Dated 1909.2023, Police Station, Sector-9 Ambala City to me. Thereafter, the above said recovered intoxicated, in total 2712 capsules, were put in the same Pithu (Backpack bag) and by putting the same in a bundle of cloth, separate bundle has been prepared and I sealed the said bundle with my seal NK/3 and after preparing the sample seal separately, the same was also sealed with my seal NK/1 and the above said Sh. Ramesh Kumar HPS/DSP sealed the bundle of intoxicated capsules with his seal RK/1 and also put his seal of RK/1 on the sample seal and the above said Sh. Ramesh Kumar, HPS/DSP attested the bundle of intoxicated capsules and the sample seal and after use, the above said Sh. Ramesh Kumar, HPS/DSP kept his seal with him. I, SI, after using the seal, entrusted the seal and the sample seal to the witness EASI Sahab Singh No. 166/AMB. The recovered material of the bundle of intoxicated capsules and sample were taken in police possession as proof through memo. The accused Gurpreet and



witnesses put their respective signatures on the memo of recovery of the case property and the above said Sh. Ramesh Kumar, HPS/DSP attested the memo of recovery of the case property of intoxicated capsules. The above said accused Gurpreet, by keeping the above said 2712 intoxicated capsules in his possession without any license or permit, has committed offence U/s 22-61-85 of NDPS Act. Upon this, after writing the information by myself SI, the same is being sent to the police station by hand through Constable Amarjeet Singh No. 969 for registering the case. After registering the case, FIR Number may be informed at the spot and special report of this case may be sent to the higher officers. Senior officers may be informed about the circumstances and as per the orders of the Hon'ble Supreme Court, Incharge Anti Narcotic Cell, Ambala was informed to send other I.O. may be sent at the spot. I, SI, become busy in investigation. Today:- Near Community Centre, Sector-7, Ambala City. Sd/- SI Naushad Khan No: 105/AMB, Anti Narcotic Cell, Ambala.'

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. He submits that the alleged recovery of 2712 capsules of Nrx Dicyclomine Hydrochloride Tramadol Hydhydrochloride Acctaminophen Capsules Spasmaxx was effected from the petitioner. He further submits that investigation in this case is complete as challan stands presented on 10.10.2023 charges stands framed on 14.08.2024 out of 17 prosecution witnesses, none has been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time and no further recovery is to be made from the petitioner. It is his further contention that the antecedents of the petitioner are clean, meaning thereby, he is not 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 1 year, 4 months and 20 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner was apprehended at the spot 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. 1 year, 4 months and 20 days, 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 10.10.2023 charges stands framed on 14.08.2024 out of 17 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. **Relief**

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

13.02.2025
anuradha

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