



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7696-2025
DECIDED ON: 17.02.2025

SIDHARTH @ SIDHARTH SAHANI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Inderjeet Singh, 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 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.140, dated 17.05.2024, under Sections 22(c) & 29 (added later on) of NDPS Act registered at Police Station Sadhaura, District Yamuna Nagar.

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

“Sir, the copy of the complaint is as follows: To Managing Officer, Police Station Sadaura, Jai Hind. Today on 17.05.2024, SI Rajesh Kumar No. 223/A, Haryana State Narcotics Control Bureau Unit Ambala along with EASI Phool Kumar No. 1366/HSR, EHC Gurmel Singh No. 689/KKR, EHC Ashok Kumar No. 1268/AMB and Baswari vehicle government HROSGV-2751 brand ISUZU whose driver is HC Praveen Kumar No. 1591/PPT along with laptop and promoter along with investigation bag for narcotics was present near Block Education Officer's office, Kotla Road,

Sadhaura, District Yamuna Nagar at about 1.50 PM, when a special informer met the SI and informed that Rajat, son of Pawan Kumar, resident of Kacha Kila Mohalla, Sadhaura, District Yamuna Nagar, deals in selling narcotic capsules. And After some time, from village Ismailpur, he will go towards his house in Kacha Kila Mohalla on his motorcycle number HR71B-4669, brand SUPLENDER Barang Kala, carrying the narcotic capsules. If a blockade is done near the office of Block Education Officer, Kotla Road, Sadhaura, District Yamuna Nagar, then Rajat can be caught on the above mentioned motorcycle along with the narcotic capsules. On the information being confirmed and credible, the SI prepared a separate information letter and sent it to EASI Phool Kumar No. 1366/HSR of Police Station Sadhaura, District Yamuna Nagar at 02.00 PM for informing the Managing Officer, Police Station Sadaura, District Yamuna Nagar. Or a notice under section 42 NDPS Act was prepared and provided for information to you Shri Kanwaljeet Singh DSP HQ Yamuna Nagar at 02.10 PM along with EHC Ashok Kumar No. 1268/AMB was sent thereafter, the SI informed his fellow employees about the informer and started the blockade. At about 02.15 PM, as per the information given by the special informer, a person was seen coming on a motorcycle bearing number HR71B-4669, brand SUPLENDER Barang Kala. The SI arrested him with the help of his fellow employee and asked his name 1 34 and address. On being asked by the SI, he told his name as Rajat son of Pawan Kumar, resident of Kacha Kila Mohalla Sadaura, District Yamuna Nagar. The SI requested the private persons commuting on the road to join the blockade. All the persons left the spot after expressing their legitimate compulsions. Thereafter, the SI informed the above mentioned Rajat by telling his name and designation that there is information about you having narcotics with you. You have the legal right to get yourself searched by a Duty Magistrate or a Gazetted Officer. For which notice was prepared under Section 50 of the NDPS Act and Rajat above mentioned was given in a

language known to him. Read and explained in Hindi. Rajat above and the witness signed the notice. Thereafter, after thinking and understanding for a while, Rajat above said that he wanted to get himself searched in front of a gazetted officer, for which a consent notice under section 50 of NDPS Act was prepared and read out to Rajat above in Hindi, a language he knew. Rajat above and the witness signed the notice. Thereafter, the SI at around 02.30 PM from his mobile phone no. 9416094967 contacted gazetted officer Shri Ashuman Thukral ETO Jagadhari (Yamunanagar) on his mobile number 9812600449 and informed him about the situation and requested him to come to the spot, whereupon at around 02.50 PM gazetted officer Shri Ashuman Thukral ETO Jagadhari (Yamunanagar) arrived in a passenger vehicle with government number HRO2GV-4899 along with his staff at the spot. To whom the SI explained the entire circumstances and presented both the notices under 50 NDPS Act along with the above mentioned person, Rajat, in front of ETO sahab. The ETO sahab informed Rajat about his name, designation and place of posting and questioned Rajat. Thereafter, ETO sahab read both the notices under 50 NDPS Act, signed them and carried out a personal search of the SI and his fellow employee for presence of narcotic substances. During the search, no narcotic substance of any kind was recovered from the possession of the SI or his fellow employee. The report of personal search and non-recovery of the employee was prepared separately. Which was presented at 03.10 PM to EASI Phool Kumar No. After 1366/HSR, the letter report was registered, the diary was present at the spot, who told that due to CCTNS server being down in this police station, there was delay in registering the letter report and the information along with the copy of the report was handed over to the SI. Thereafter, as per the orders of Gazetted Officer Shri Anshuman Thukral ETO Yamunanagar, the SI searched Rajat son of Pawan Kumar resident Kacha Qila Mohalla Sadhaura, Police Station Sadaura, District Yamunanagar and the search of the white colour polythene hanging from the right handle of

the motorcycle was carried out by the SI. During the search, Hydrochloride, Tramadol Hydrochloride Acetaminophen Capsules (SPASMO-PROXYVON PLUS having batch no. WAA3044, MFG.JUL was recovered from inside the white colour polythene hanging from the right handle of the motorcycle of above mentioned Rajat. 23, EXP.JUN.25, total 24 strips of which each strip. has 24 capsules, making a total of 576 capsules were recovered. One mobile phone brand VIVO colourless light yellow in color with SIM number 9053046028 was recovered from the right pocket of the military colour lower worn by him. Currency notes worth Rs 600/- were recovered. The SI called Bindu Dhiman, Drugs Control Officer, Jagadhri (Yamunanagar) on his mobile number 8814972716 from his mobile number 9416094967 and requested him to come to the spot. The Drugs Control Officer, Jagadhri (Yamunanagar) asked the SI to send a separate application for taking opinion on the recovered narcotic capsules or a photo of the leaf of the recovered narcotic capsules or to take out 4 capsules from the leaf and weigh them and send the photo on WhatsApp. The SI took out the mobile-like computer weighing scale from the official vehicle and took out 4 capsules from one leaf of the recovered capsules and weighed them. On weighing, the weight of the 4 capsules came to be 2.46 grams. The total weight of the recovered 576 narcotic capsules came to be 354 grams 24 milligrams. The 4 capsules that were taken out were put in the same leaf and taped and a separate application was sent to the SI. After writing about taking opinion on the capsules or taking a photo of the leaf of Barada capsules, it was Whapped to the mobile number of the Excise Control Officer 8114972716, which the Excise Control Officer sent his report through WhatsApp to the SI, who wrote about Barada capsules coming under the category of NDPS Act, after that the SI put the narcotic capsules in the same white coloured polythene and put the polythene in a white coloured cloth bag and prepared a palanda and stamped the palanda by putting his RK/3 seal on it and prepared a sample seal by putting

RK/1 stamp on a white coloured cloth piece and after the seal was used, it was handed over to EHC Gurmel Singh 689/KKR, who is a gazetted officer Shri Anshuman Thukral, ETO Yamuna Nagar also stamped the Palanda goods case narcotic capsules along with sample seal by putting his AK's 1/1 stamp. He got the seal stamped and kept the seal with himself after using it. Thereafter, the SI put the recovered mobile phone with SIM and 600/- currency notes in a white coloured cloth bag and prepared a palanquin. The SI put his RK/1 seal on the palanquin and got it stamped and the search report taken by the police as reason for the seizure was prepared separately. On the search report, Rajat above mentioned and the witness signed their respective signatures. The recovered palanquin goods, narcotic capsules with sample seal and motorcycle no. HR71B-4669 Marco SUPLENDER Barang Kala, which were taken by the police as reason for the seizure was prepared separately. On the recovery report, the accused Rajat above mentioned and the witnesses signed their respective signatures. The accused Rajat above mentioned had in his possession Hydrochloride, Tramadol Hydrochloride Acetaminophen Capsules (SPASMO-PROXYVON PLUS) capsules illegally. The crime has been committed under section 22(c)-61-85 NDPS Act, for which an article is being written and the registered case is being sent to EHC Gurmel Singh 689/KKR at Sadaura police station. After registering the case, the accused number should be informed at the spot and a special report of the First Information Report should be sent to the higher authorities and for further investigation at the spot, the second investigation officer, SI informed ASI Sandeep Kumar No. 75/A over phone. I SI am busy in investigation at the spot.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner

was not initially named in the instant FIR but was subsequently roped in

only on the basis of disclosure statement of co-accused Rajat, from whose possession the alleged contraband i.e. 24 strips and each strip containing 24 capsules i.e. total 576 capsules make 'Spasmo Proxyvon Plus' containing the salt 'Tramadol' was recovered. He further contends that nothing has been recovered from the possession of the petitioner.

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 petitioner is a habitual offender as he is involved in two more cases wherein one is under NDPS Act i.e. FIR No.121, dated 29.04.2024, under Section 22(c), 29 of NDPS Act.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 25 days for which the petitioner has suffered incarceration; the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Rajat, from whose possession the alleged contraband was recovered in addition to the fact that investigation is complete, challan stands presented to Court on 04.11.2024, charges are yet to be framed and total 23 prosecution witnesses have been cited, 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.

17.02.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No