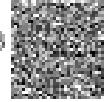


2025:PHHC:037853



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

**CRM-M-9150-2025
DECIDED ON: 19.03.2025**

SHIVAM

....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pardeep Tanwar, Advocate
 for the petitioner.

Mr. S.S. Pannu, Addl. AG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The Jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking regular bail to the petitioner in FIR No.370 dated 24.10.2024 under Sections 22-C, 29 of NDPS Act, 1985 registered at Police Station Sarai Khawaja, District Faridabad, Haryana.

2. Facts as narrated in the FIR read as under:-

“Constable Manoj 1977 and Constable Jaibeer 3989 were present with their private car at sector 37, Huda Market, Sarai Khwaja, Faridabad. when a secret informer met them and informed that a person named Reshampal Bhati, resident of Jawahar Colony, Faridabad, who sells narcotic injections, will come today with narcotic injections in his pocket waiting for someone to sell them in front of the cremation ground near the bypass road. If a raid is conducted by immediately closing the blockade, he can be caught along with the narcotic injections.

After informing Officer of this information, Constable Jaibeer 3989 was given a notice under 42 NDPS and sent to Police Station Sarai Khawaja, Faridabad. After informing his fellow employee about the information given by the secret informer, the SI along with his fellow employee set up a check post in front of the cremation ground at the place mentioned by the secret informer. After some time, a person was seen coming on foot from Delhi Badarpur Road towards the cremation ground. The secret informer, sitting in a private car, signaled with his hand that the person wearing grey pants and blue T-shirt, who is coming towards the cremation ground from Delhi Road, is Reshampal Bhati. The secret informer was released. When the secret informer tried to control the person when he came close, the person started running back. With the help of his fellow employee, the SI controlled the person and asked his name and address. He told his name as Reshampal Bhati aged 52 years son of Mahipal Singh Bhati, resident of Jawahar Colony, NIT Faridabad. On suspecting that Resham pal Bhati was in possession of narcotic injections, A notice of 50 NDPS regarding search was read out and explained to him, the person Reshampal Bhati, after reading the notice, gave his consent in writing for his search by a gazette officer magistrate, which the SI through his mobile number- 9999225555 informed the Duty Magistrate Shri Gajendra Kumar ETO North Faridabad on his mobile number-9811153085 about the situation of the spot and informed him to come to the spot, or during the same time SI Jaibeer 3989 after complying with notice 42 NDPS Act, came to the spot with DDE 40 dated 23.10.2024 at Police Station Sarai Khwaja and copied the report. After several hours, the Duty Magistrate Mr. Gajendra Kumar of ETO North Faridabad arrived at the spot and the Duty Magistrate informed the above-mentioned person Reshampal Bhati about his name and designation and got his full introduction done and interrogated the person Reshampal Bhati. After the interrogation, the Duty

Magistrate searched the right pocket of the grey-coloured pants worn by person Reshampal Bhati and found a grey coloured pant worn by person Reshampal Bhati. A white polythene was found from the right pocket of the pant, inside which injections were found. On checking, NRX BUPRENORPHINE INJECTION IP 2 M.L. with batch number ML 23355, date of manufacture 07/2023 and expiry date 06/2025, total 5 injections were found and NRX BUPRENORPHINE INJECTION IP 0.3 MG/M.L. with batch number ABM24005, date of manufacture 08/2024 and expiry date 07/2026, total 7 narcotic injections were found. On counting, a total of 12 narcotic injections were recovered. To get opinion about all the narcotic injections recovered, the SI took the photo of the recovered narcotic injections from his phone and sent it to the mobile number 8510021516 of Drug Inspector Dr.Sandeep Gahlyan through WhatsApp of his phone number. Dr. Sandeep Gahlyan was sent for opinion, who told that the injections come under the category of NDPS and told about giving the opinion in writing later. When the person Reshampal Bhati was asked for license and permit for keeping the narcotic injections, then Reshampal Bhati could not produce any documents nor could give a satisfactory answer. The narcotic injections in the same white polythene in a plastic box, a cloth basket was prepared and the plastic box was put in that and the basket was stamped by the SI with his seal MJ and the Duty Magistrate Sahib stamped the new basket with US, after the seal was handed over to SI Jaibeer and the Duty Magistrate Sir kept his seal with himself. The recovery of the bundle of narcotic injections was taken by the police as evidence in the Bajaria report, on the report the accused and the witness put their two signatures, the duty magistrate recorded the recovery of the bundle and the report and a separate sample seal was prepared. The accused Reshampal Bhati, who left from the spot, has committed the crime under section 22C-61-85 of NDPS by keeping narcotic

injections illegally in his possession, hence the complaint for the registered of FIR is being sent to the police station by head constable Manoj. After the registration of the FIR number, inform through the form, a special report of the case should be sent by the special constable to the officers and the area magistrate and for further action, another investigation officer should be sent to the spot; I am present at the spot for investigation. Today: Bypass Road Crematorium Sec. 37 SD-SI JAGDISH Crime Branch Border, Faridabad Date 24.10.2024 AT: 10.30 am Today Police Station-Sarai Khawaja Arrival Tahir On receipt of the above in the police station, FIR No. 370 Dated-24.10.2024 Section 22C-61-85 of N.D.P.S ACT P.S SARAI KHAWAJA FARIDABAD was registered and First Information Report was filed. Computerized copy of the same is being prepared as per rules and sent through Bajariya Post to the concerned officers of Special Constable Dharmendra 1713 P.S. SARAI KHAWAJA Faridabad and the Area Magistrate. The copy of the original complaint along with the police is being sent to through HC, which has been informed to visit the spot by contacting SI Udham No. 84 Faridabad Crime Branch Border Faridabad on Mobile No. 9812433608 for further action. Note- The above case was registered in the presence of PSI Ved Prakash P.S SARAI KHAWAJA FARIDABAD. Note- As the CCTNS ID of SI Udham Crime Branch Border Faridabad was not available in CCTNS, the above case was registered in the CCTNS ID of P/SI Ved Prakash.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused namely Reshampal and no recovery of contraband has been effected from the possession of the petitioner. He further submits

that the antecedents of the petitioner are clean, as he is not involved in any other case. Moreover during investigation no incriminating material has put forth to connect the petitioner with the recovery of alleged contraband, as alleged in the FIR.

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 5 Buprenorphine injections 0.2 ML and 7 Buprenorphine injections 0.3 ML, total 12 injections was recovered from the co-accused Reshampal Bhati, who named the petitioner in his disclosure statement stating that he had purchased these injections from the petitioner.

4. **Analysis**

Be that as it may, considering the fact no recovery of contraband was effected from the conscious possession of the petitioner and except disclosure no incriminating material has been put forth by the State to connect the petitioner with the alleged contraband added with the fact that antecedents of the petitioner are clean and challan stands presented on 22.02.2025, wherein the prosecution has cited 15 prosecution witnesses, which remains to be examined, as charges are yet to be framed, 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.

5. **Relief:**

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.

19.03.2025

sham

Whether speaking/reasoned

Whether reportable

(SANDEEP MOUDGIL)

JUDGE

Yes/No

Yes/No