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2025:PHHC:047723



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

**CRM-M-17213-2025
DECIDED ON: 07.04.2025**

SACHIN @ ABHISHEK

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vicky Chauhan, Advocate and
Mr. Anil Kumar Chauhan, Advocate for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the fourth time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No. 195, dated 08.09.2023, under Sections 22 C and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Raipur Rani, Panchkula.

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

The copy of Note is as following:-To, The Station House Officer, Raipur Rani, District Panchkula, Jai Hind. Today on 08.09.2023 I, ASI Sandeep Kumar 109/PKL HSNCB UNIT AMBALA along with EASI Mehboob Ali No.524 /YNR, EASI Phool Kumar 1366/ HSR, EHC Gurmail Singh 689/ KKR, EHC Ashok Kumar in official vehicle HR 05GV 4720 mark Scorpio with driver HGH Satbir for

preventing intoxicant substance was on patrolling duty, during patrolling duty at time 03.30 PM is present at Raqba near Durga Seed Farm, Kakrali Mauli Chhajjumajra Road. The special Informer has met and passed the information to me, ASI that Sachin @ Abhishek son of Sanjeev Kumar alias Sanju resident of village Kakrali Police Station Raipur Rani, District Panchkula who is running a Kariyana shop at Kakrali bus stand and is in business of selling Intoxicant Capsules, from his Kariyana shop. Today also Sachin alias Abhishek is selling Intoxicant Capsules by sitting in his Kariyana shop. If raid is conducted immediately then Sachin @ Abhishek can be nabbed with Intoxicant Capsules. The informer told the description and identity of accused and from the spot. The information of informer being reliable to believe at time 03.50 PM Rukka was prepared separately and it was sent to Station House Officer Raipur Rani for information through EH Ashok Kumar 1268/ AMB and at time 04.00 PM separate Notice U/s 42 of N.D.P.S. Act was prepared and it is being sent as intimation through EASI Phool Kumar 1266/ HSR to Shri Surender Singh HPS/ ACP Sector 20, Panchkula. Then I, ASI along with co-officials and official vehicle has prepared Raiding Party and at time 4.15 PM have reached at bus stand Kakrali and asked nearby shopkeepers and passerby persons have to join Raiding Party and told about the information of informer. That all of them by expressing their compulsions have left the spot. After that I, ASI along with co-officials and official vehicle have reached at the Kariyana shop of Sachin Abhishek son of Sanjeev Kumar alias Sanju resident of village Kakrali, Police Station Raipur Rani, District Panchkula. There inside of shop a Youngman was seated as per description told by informer and he was holding yellow color carry bag in his right hand by sitting on his chair. He was nabbed by myself ASI with the help of co-officials and enquired his name and address. Then he told his name and address as Sachin alias Abhishek son of Sanjeev Kumar alias Sanju resident of village Kakrali, Police Station Raipur Rani, District Panchkula. Then I, ASI have introduced my identity and told that there is apprehension of you having Intoxicant Capsules and search of you and search of yellow color carry bag hold by you in your

right hand and search of your shop are to be conducted. You have legal right that if you want to get conducted the search of you and search of yellow color carry bag hold by you in your right hand and search of your shop before some Gazetted Officer. At this Notice U/s 50 of N.D.P.S. Act was prepared separately and it was read over to Sachin alias Abhishek in his known language Hindi vernacular and got understood to him, The Notice was signed by Sachin @ Abhishek and witnesses also put their signatures. Then after thinking for some time Sachin alias Abhishek has told that I want to get conducted the search of myself and search of yellow color carry bag hold in hand and my shop before Gazetted Officer. At this consent Notice U/s 50 of N.D.P.S. Act was prepared separately and it was read over and got understood to Sachin alias Abhishek in his known language Hindi vernacular. The Memo was signed by Sachin alias Abhishek and witnesses also put their signatures. After that at time 05.25 I have called from my Mobile No.8950233999 to Duty Magistrate Shri Arun Kumar, Excise Taxation Officer, Panchkula at his Mobile No.9992077796 and informed about the status and informed to come present on the spot. Then at 06.00 PM Duty Magistrate Sahib in official vehicle mark Ertiga has appeared on the spot. As per rule he has marked seen Notice U/s 50 of N.D.P.S. Act and consent of Notice U/s 50 of N.D.P.S. Act and introduced his identity to Sachin alias Abhishek and after enquiry as per rule has conducted the search of me, ASI and co-officials and from me ASI and all of co-officials nothing was recovered, except items of daily use. Then Memo of recovery of nothing was prepared and it was signed by above mentioned Sachin alias Abhishek and co-officials, myself, ASI and Duty Magistrate. After that Duty Magistrate Sahib has directed to me, ASI to conduct the search of Sachin alias Abhishek and of yellow color carry bag hold by him in his right hand and his shop. At this as per order of Duty Magistrate has conducted the search of Sachin alias Abhishek and search of yellow color carry bag which he was holding in his hand and search of his shop. That from inside of yellow color carry bag hold by Sachin alias Abhishek in his right hand 25 strips of DICYCLOMINE HYDROCHLORIDE, TRAMADOL HYDROCHLORIDE ACETAMINOPEN CAPSULES

*B.NO.- WAA3022 MFG DATE JUN/23 EXP DATE MAY/25
MANUFACTURED IN INDIA BY ML 10/UA/ 2004 AKUMAS
DRUGH PHARMACEUTICAL LTD. 19.20.21, SEC 6A 1.1.E.,
SIDCUL, RANIPUR, HARIDWAR-249-203. Each strip containing
8X3 24 Intoxicant Capsules, total 25X24 600 Intoxicant Capsules
were recovered. After that at 06.30 PM myself, ASI from my Mobile
No.8950233999 has called to Shri Praveen Kumar, District Drugs
Controller, Sector 11, Panchkula at his Mobile No.8685036906 and
told about status. He has told me over telephone that photo of
recovered Intoxicant Capsules and 10 capsules by taking out from
Strip and weight of these and a separate application be sent to me
through WhatsApp. At this I, ASI has taken out 10 capsules and
weighed it on electronic machine and the weigh of 10 capsules was
found 6 gram and the taken out capsules were put into the same strip
and total weight of 600 capsules comes to 360 gram and after taking
photograph of 600 capsule and an application were sent on his
WhatsApp No.8685036908 to District Drugs Controller Officer
Sector 11, Panchkula and in the application was mentioned for
opinion that if the recovered capsules comes under Intoxicant
Capsules under N.D.P.S. Act. The recovered capsules were put into
same yellow color carry bag and then put into a white color cloth
bag and parcel of the same was prepared. The parcel was sealed at 3
by me ASI with my Seal engraved as SK and on the patch of white
cloth Seal engraved as SK was put and Sample Seal was prepared.
The Seal after use was handed over to EHC Gurmail Singh 689/
KKR, After that Duty Magistrate Sahib has also put his Seal at 1/1
engraved as AK on case property parcel of Intoxicant Capsules and
Sample Seal. The Seal after use was retained by him. The parcel of
case property containing Intoxicant Capsules and Sample Seal were
attested by Duty Magistrate and put this signature. I have taken in to
police possession the parcel containing Intoxicant Capsules and
Sample Seal as case properties through Seizure Memo. Memo of
Recovery of Intoxicant Capsules was prepared The Memo were
signed by accused Sachin alias Abhishek and witnesses also put
their signatures. Memo of Recovery was attested by Duty Magistrate
Sahib. That Sachin alias Abhishek by illegally possession 600*

Intoxicant Capsules Tramadol in his possession has committed offence U/s 22C-61-85 N.D.P.S. Act. At this Note is being prepared and for registration of case it is being sent to Police Station Raipur Rani through ESI Mehboob Ali 524/ YNR. After registration of case, F.I.R. number be informed and through Special Report, illaqa Magistrate and Senior Officers be informed and In-Charge, HSNCB Unit AMB be informed to send another Investigating Officer on the spot for further investigation. I, ASI is busy in investigation on the spot of incidence. Today near bus stand Kakrali. HSNCB UNIT AMBALA Date-08.09.2023. Time 07.00 PM. Today at Police Station: On receipt of above mentioned Note through ESI Mehboob Ali 524/ YNR at Police Station, from the contents of Note it is found to be commission of offence U/s 22C, 61, 85 N.D.P.S. Act. At this F.I.R.No.195 is registered on date 08.09.2023 U/s 22C, 61, 85 N.D.P.S. Act at Police Station Raipur Rani. The police file along with Note in original are handed over to ESI Mehboob Ali 524/ YNR being sent on spot of incidence to Investigating Officer. After preparing the Special copies of First Information Report these will be sent to Illaqa Magistrate and concerned Senior Officers through Email. Station House Officer was informed about the case through telephone. Being not available the ID of ASI Sandeep Kumar 109/ Panchkula HSNCB UNIT at Police Station Raipur Rani it has been entered in the name of PSI Mandeep Singh, In-Charge, Police Post Maull.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He further contends that the co-accused, namely, Sonu and Ravi Kumar have already been granted the concession of regular bail by this Court vide orders dated 18.07.2024 (Annexure P-7) and 05.08.2024 (Annexure P-8) passed in CRM-M-3111-2024 and CRM-M-34796-2024 respectively. It has been contended on behalf

of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

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. 600 Dicyclomine Hydrochloride, Tramadol Hydrochloride and Acetaminophen Capsules has been recovered from the possession of the petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 06 months and 25 days for which the petitioner has suffered incarceration; co-accused, namely, Sonu and Ravi Kumar have already been granted the concession of regular bail by this Court vide orders dated 18.07.2024 (Annexure P-7) and 05.08.2024 (Annexure P-8) passed in CRM-M-3111-2024 and CRM-M-34796-2024 respectively and the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate.

Also considering the fact that investigation is complete, challan stands presented to Court on 21.02.2024, charges have been framed on 08.05.2024 and out of total 22 prosecution witnesses only one 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.

5. RELIEF:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him 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.

07.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No