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

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*Date of decision: 13.01.2025***Vicky****.....Petitioner****Versus****State of Punjab****.....Respondent****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Dr. Malkiat Singh, Advocate for
the petitioner.
Mr. Jaspal Singh Guru, AAG, Punjab.

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

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking the concession of grant of regular bail for the petitioner in FIR No.348 dated 24.11.2023 under Sections 21/22/61/85 of NDPS Act registered at P.S Rajpura, District Patiala.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“FIR No.348 dated 24.11.2023, under Sections 21 & 22 of the NDPS Act, registered at Police Station City Rajpura, District Patiala. XX Xx xx XX XX XX xx XX XX xx XX XX xx xx XX XX X XX XX xx Copy of the original notification (Ruqqa, "SHO Police Station City Rajpura Patiala, Jai Hindi" Today on 24.11.2023, I myself SI alongwith the ASI Harjinder Singh 3099/PAT, ASI Sinderpal Singh 501/PAT, PHG Jasvir Singh No.509/PAT, PHG Jujhar Singh No. 30842, PHG Bittu Singh No. 18229 boarded on with the private vehicle with the Laptop and Printer were present in concern to the blockade at New Under Bridge Near Court Road Rajpura. And were checking the vehicle passing through there. It



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was around 6.30 PM when a bullet motorcycle came from the under bridge side. No. PB 08 DW 0321 red in colour, two non sikh young men, who seeing the blockade party, panicked and started to stop the motorcycle and turn back, I, myself SI stopped them on the basis of suspiciousness by bawling them and apprehended with the help of fellow workers. And they were asked for their name and address. The motorcycle driver uttered his namé as Kiran Kumar, son of Kala Masih, resident of House No. 87, Uchi Ghati, Ward No. 10, near Kila Police, Phillour Police Station Phillour District, Jalandhar and the pillion rider said his name Vicky son of Garib Das resident of Deha Basti Brara Road Sahbad (Haryana) District Kuruks) etra. Then I myself SI, introduced myself and said, "I am Thanedar Jagjit Singh posted at Special Cell Rajpura. You may have narcotics in your possession. I have to search you but you have the legal right to do so." You can get your search done by Magistrate or any gazetted. officer who may be called on occasion, who the a thought for a while and said that we are quite sure that you can search us and the motorcycle in our possession. Then I, myself SI has issued separately the notice under section 50 of ND&PS Act to the Motorcyclist Kiran Kumar, son of Kala Masih, resident of House No. 87, Uchi Ghati, Ward No. 10, near Kila Police, Philore, Philore District, Jalandhar, and Vicky, son of Garib Das, resident of Dheha Basti, Barara Roal, Shahbad (Haryana), District Kurukshetra. And then written Memo of personal statement of consent separately of the aforesaid Kiran Kumar and Vicky. The aforesaid Kiran Kumar and Vicky signed their signatures and the witnesses gave their signatures on the Memo of consent of personal statement. Then I, myself SI conducted a search of the said Kiran Kumar and during the search, a white coloured polythene envelope was recovered from the right pocket of the black lower worn by the said Kiran Kumar. And on checking the envelop and as he told the heroin was discovered and found 25 gram in weight alongwith the polythene envelop. A parcel was prepared by putting the recovered intoxicant heroin in the polythene envelop in the plastic box. Then on checking the pillion rider Vicky, a black coloured polythene envelope was recovered from the lower left pocket of the black colour lower, which was checked and discovered the intoxicating pills which on counting were 980 in quantity, which was then put

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back into the polythene envelop and then were put in plastic box and parcel of the same was prepared and both the parcel were sealed with their seal stamp of Letter JS. The sample stamp was prepared separately AND then after the use of the stamp/seal was handed over to ASI Sinderpal Singh No. 501/PIT then I, myself SI has taken both the sealed parcel alongwith the sample seal into police custody through a separate Memo and on the memo the signatures of the witnesses were obtainen. By keeping 25 gram of heroin in possession the accused Kiran Kumar and intoxicant pills 980 in numbers by accused Vicky has committed the crime/offence under section 21/22/61/85 of NDS Act. Therefore the notification of the prese it case of the said accused is being send by head through HC Jasvir Singh 509/PAT to the police registration of the case accused Kiran Kumar station for gainst the aforesaid and Vicky. After registration of the case the case number to be notified. The senior officers should be informed through phone. I, myself SI alongwith the fellow officials is investigating the incident. At the location situated at New Under Bridge Near Kachihari Road Rajpura Time-8.45 PM Sd/- Jagjit Singh SI Special Cell Rajpura District Patiala Dated: 24.11.2023 On receipt of the Ruqqa (Notification) of the present case at the Police Station a case was registered against the said crime against the aforesaid Kiran Kumar and Vicky. The record is being completed. Copies of FIRS are being sent in the services of Hon'ble Area Magistrate Sahib and Officers by post. I/C Control Room Patiala is bring intimated to I/C Control Room Patiala by through W/M. Original Notification along with case file is being sent for further action by hand through the received /arrived HC Jasvir Singh 509/PAT to SI Jagjit Singh Special Cell Rajpura at the incident spot. DDR NO:- 59 AT: 10:05 PM Dace: 24.11.2023 ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and as per the prosecution story, it is a case of chance recovery wherein no procedure under Section 50 of the NDPS Act has been followed properly. He further submits that no FIR has been registered

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against the petitioner under the provisions of NDPS Act and that the antecedents of the petitioner are clean and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time and the petitioner is behind bars for the last 01 year, 01 month and 16 days.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that a recovery of 980 intoxicating tablets was effected from the left pocket of present petitioner which is little more than the commercial quantity. He has produced custody certificate dated 12.01.2025 vide which the petitioner is behind bars for the last 01 year, 01 month and 16 days. Challan in this case was presented on 20.01.2024, charges have been framed on 12.03.2024 and out of total 16 prosecution witnesses, 04 have been examined.

Analysis

5. Be that as it may, considering the fact that no other case is registered against the present petitioner and the petitioner has no criminal past and taking note of the fact that the petitioner has suffered sufficient incarceration for the last 01 year, 01 month and 16 days, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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



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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



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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 ReInhuman 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*



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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.”

6. 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 as 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 the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 439 of Cr.P.C. 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.

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However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)

JUDGE

13.01.2025

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1. Whether speaking/ reasoned : Yes /No
2. Whether reportable : Yes /No