



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54617-2024
DECIDED ON: 09.04.2025

SUBHASH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashok Goel, 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 under Section 483 of Bhartiya Nagarik Suraksha Sanita, 2023 for grant of regular bail to the petitioner in FIR No. 537 dated 20.12.2023 under Section 22(c) of the NDPS Act, Police Station Meham, District Rohtak.

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

“To The SHO, Police Station Meham, Rohtak. Jai Hind, Today I ASI alongwith HC Parveen No. 1288/RTK, C. Manoj Kumar 1597/RTK alongwith private vehicle no. HR16Z-0608 make Venue alongwith laptop and printer were present near Gohana Mor, Meham regarding crime patrol. Then a special informer met me and informed me that Prince and his father Subhash son of Mange Ram residents of Chotu Ram Colony, Rohtak, use to sell illegal

narcotic and prohibited drugs and today also they will come with the narcotic and prohibited drugs in their vehicle no. HR12AL-9220 make WagonR white in colour to supply them in Mehamcity. If a immediate naka can be put on Rohtak Road, Meham, then they can be apprehended with narcotics drugs. The information is true and reliable and notice under section 42 of NDPS is prepared to register the rapat Roznamcha through Manoj Kumar 1597. I ASI alongwith my colleagues reached near Warehouse Meham in a private vehicle and the naka was put with the help of colleagues and started checking the vehicles coming and going. In the meanwhile, I made a call in my mobile number 8930019006 from Drugs Control Inspector, Rohtak Mandeep Maan on his mobile number 7404013222 and he apprised the situation and was requested to reach the spot, then he stated that due to the official work is out station, they could not present at the spot. At the same time, a vehicle was seen coming from Rohtak as informed by informer. Thereafter, it was stopped and checked with the help of fellow employees, then a person was seen sitting on the driving seat of the vehicle, who told his name as Prince son of Subhash, resident of H.No. 1517/20, Chhotu Ram Colony, Rohtak and the person sitting on the adjacent seat told his name as Subhash son of Mange Ram, resident of H.No. 1517/20, Chhotu Ram Colony, Rohtak. On checking the vehicle, the front and rear number plate had the number HR 12AL 9220, make WagonR, white in colour. The ASI gave them a notice of section 50 NDPS Acts and told them that I, ASI Somvir No. 847/RTK am posted as Investigating Officer at Police Post, City Meham, you are Prince and Subhash, residents of Chhotu Ram Colony, Rohtak and information has been received that your vehicle no. HR 12 AL 9220 contains illegal and prohibited drugs, for which it is necessary to search you and your vehicle. You have the legal right to get yourself and your vehicle searched by a nearby magistrate or a gazetted officer. For which you can be taken in front of them or they can be called on the spot. The suspects Prince and Subhash and the witnesses signed the

notice, in response to which the suspects Prince and Subhash gave in writing that I Prince son of Subhash and Subhash son of Mange Ram resident of Chotu Ram Colony Rohtak have understood and read the gist of the notice given by you. We want to get ourselves and our vehicle no. HR 12 AL 9220 searched by a gazetted officer. Those who should be called on the spot, on the reply notice, the suspects Prince and Subhash and the witnesses signed on it, on which the ASI contacted the gazetted officer Sandeep Kumar, Deputy Superintendent of Police, Meham, Rohtak on his mobile number 7082999107 from his mobile number 8930019006 and informed him about the situation and requested him to reach the spot, in the same matter, after which SI Manoj Kumar No. 1597/RTK came to register the report, the diary was present at the spot and the copy report number 4 dated 20.12.2023 and the original notice 42 NDPS Act were brought and presented to the ASI, which were kept. After some time, the gazetted officer Mr. Sandeep Kumar, Deputy Superintendent of Police, Meham, arrived, who informed everyone about his name and position and himself carried out the search of the ASI, during the search, no suspicious narcotic substance was recovered from the ASI. The search report of which was prepared separately by the gazetted officer. The suspects Prince and Subhash and the witnesses signed the report and the gazetted officer gave verbal orders to the ASI to search the suspects Prince and Subhash and their vehicle no. HR 12AL 9220. As it was non-night time, no witness from the local public was available. The ASI, in the presence of the spot witness, carried out the search of the suspects Prince and Subhash and their vehicle no. HR 12A1. 9220 as per the verbal orders of the gazetted officer. During the search, four packets, each of yellow and green in colour, were found in a black colour polythene kept on the footrest between the feet of Subhash son of Mange Ram, who was sitting on the conductor's seat. 0.50 MG was found written on it. When opened and checked, 12 packets were found in each packet containing 50 tablets. Each packet had batch number G 2036 and Aarpik written on it.

Pharmaceuticals Pvt. Ltd C1/306/5, Kerla G.I.D.C. Kerla, Bavla Road, Dist. Ahmedabad and in place of EXPIRE DATE a white mark was found, total 2400 TABLETS were found in all the packets, 10 intoxicating tablets were taken out from one packet and weighed on an electronic computer scale, total weight of 10 intoxicating tablets was 1.26 grams, which means total weight of 2400 intoxicating tablets was 3024 grams. The photographs of the recovered TABLETS were sent from his personal phone number 8930019006 to through WhatsApp mobile number 7404013222 Mandeep Mann IGS Control Inspector Rohtak, who told that the above mentioned ALPRAZOLAM TABLETS LP. 0.50 MG is prohibited and comes under the purview of NDPS and he has been asked to give his report in future, on which the ASI put total four packets in separate white polythene bags and prepared separate sheets from the black polythene bags and after surveying the sheets with his seal SS6, the parcel was taken into police possession as proof in the vide Fard and the vehicle number HR 12 AL 9220 brand WagonR was also taken into police possession by the same Fard and after using the seal, it was handed over to SI Praveen 1288. The accused and the witnesses signed on the Fard. The gazetted officer verified the parcel and Fard by putting the survey seal on the black polythene parcel with his seal S.K. The seal was kept with him. The accused Prince and Subhash above mentioned had in their possession a total of 2400 TABLETS of ALPRAZOLAM TABLETS IP. 0.50 MG whose total weight is 302.4 grams without license permit and have committed the crime under section 22(C) of NDPS Act. Hence a written complaint is being sent through CI Manoj Kumar 1597/RTK of Police Station Meham for registering a formal case. Afterwards, the case registration number should be informed and the concerned officers should be sent a special report of the case and a second competent investigator should be sent to the spot. I, ASI along with my fellow employees, along with the accused and the goods, am present at the spot of the case. Today,

*near warehouse Meham SD-SOMVIR ASI PP CITY
MEHAM DT 20.12.2023 AT-02:30 AM.”*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that nothing has been recovered from the conscious possession of the petitioner as whatever was recovered i.e. 2400 tablets of Alprazolam Tablets I.P. 0.50 mg that was from the alleged vehicle. He further contends that the petitioner that he is a man of clean antecedents as he is not involved in any other case. It has been further contended that after completion of the investigation, challan stands presented to Court on 11.07.2024, charges have been framed on 23.10.2024 and out of total 15 prosecution witnesses only 01 witness has been examined till date.

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 recovery i.e. 2400 tablets of Alprazolam Tablets I.P. 0.50 mg was effected from the petitioner along with his co-accused, though the same is non-commercial in nature.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 01 month and 07 days for which the petitioner has suffered incarceration; nothing has been recovered from the conscious possession of the petitioner as whatever recovery was effected that was from alleged vehicle; the petitioner is not a habitual offender as he is not involved in any other case,

as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 11.07.2024, charges have been framed on 23.10.2024 and out of total 15 prosecution witnesses only 01 witness has been examined till date, 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.

09.04.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No