



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215-2

CRM-M-60092-2024(O&M)
Decided on : 27.01.2025

VINOD KUMAR

. . . Petitioner(s)

Versus

STATE OF HARYANA

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Mohit Rathee, Advocate for the
petitioner(s).

Mr. Anmol Malik, DAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 BNSS has been invoked for grant of regular bail to the petitioner in case FIR No.263 dated 18.06.2024 under Section 22(C) of NDPS Act, 1985 (Section 29 of NDPS Act added later on), registered at Police Station Purani Sabzi Mandi Rohtak, District Rohtak.

2. The translated version of the FIR is reproduced below:-

"To The SHO Police Station Purani Sabzi Mandi, Rohtak. Jai Hind. Today I ASI Rohtash 1070/RTK along with fellow officials EHC Vikas 431/DDR, CT Parmod 1459/HSR, CT. Vijay 515/SPT alongwith laptop, printer in government vehicle ISUZU bearing number HR05GV-1767 driven by EHC Ravinder 2320/FBD am present near Mata Darwaza Chowk, Rohtak in search of narcotics substances. A special informer met me and informed me that Amit alias Mendhak son of Rajesh resident of Pahra Mohalla, Rohtak who sells the banned medicine WINCEREX, will come from Gohana Adda today with bottles of WINCEREX and will go to his home in Pahra Mohalla, Rohtak, who is wearing black lower and green T-shirt, if a barricading is done near Baba Sadanath Temple, Pahra Mohalla, then he can be apprehended along with the bottles of banned medicine WINCEREX. Since the information is true and reliable, hence notice under section 42 NDPS Act is being prepared and sent through EHC Vikas 431/DDR to the Police Station Purani Sabji Mandi, Rohtak for report. After getting the report registered, the diary number should be informed. SHO Sahib and the senior officers should be informed. I ASI along with fellow official on official vehicle reached ahead of Baba Sadanath Temple, Pahada Mohalla, Rohtak and set up a check post. After some time as per information from a special informant, a person wearing black lower and green T-shirt and carrying a black plastic bag in hand was seen coming from Gohana Adda. On seeing the police party, he immediately turned back and tried to run away. Then I ASI, with the help of fellow officer, overpowered the aforementioned person along with the bag at a distance of few steps and asked his name and address. He told his name as Amit alias Mendhak son of Rajesh, resident of Pahada Mohalla, Rohtak. To whom I ASI disclosed my identity and designation and said that we have information that you are



in possession of banned narcotic drugs, therefore it is necessary to search your person and the black plastic bag, having in your hand. You have the legal right that if you want your search to be done in front of a magistrate Sahab or a gazetted officer, then he can be called on the spot or you can be taken to him and presented before him. The notice under section 50 NDPS Act was prepared and the notice was read out and explained to him, on which Amit alias Mendhak above said and the witnesses endorsed their signatures. The abovementioned suspect Amit alias Mendhak replied in his reply that I am illiterate, I can understand Hindi, I cannot read but can sign, I have understood well the notice that you have read out to me, I want my search to be done in front of a gazetted officer, he should be called on the spot. A reply to notice under section 50 NDPS Act was prepared. Amit alias Mendhak abovesaid and the witnesses endorsed their signatures on the reply of notice, then I ASI from my mobile number 9416386554 sent the information to the gazetted officer appointed the Deputy Commissioner, Rohtak on mobile No. 8708049440 at 03.44 PM and informed him about the situation and requested him to come to the spot, who told that I am coming to you on the spot after some time. In the mean time EHC Vikas 431/DDR after getting the report No.30 dated 18.06.2024 registered at Police Station Purani Sabji Mandi, Rohtak, came present alongwith the copy of report along with notice under section 42 NDPS ACT and was handed over to me ASI, which was kept by me. At the same time at 04.10 PM, Sh. Ashutosh Narwal SDO CONST. S/DIV. 8 ROHTAK came present in his official vehicle along with his staff to the spot, who discussed the matter with me ASI, made enquiries from the accused. after discussion, and disclosed his identity and designation. The search of me ASI was got conducted by CT Vijay 515/SPT. No suspicious item was found with me ASI. A report of search was prepared on which the accused Amit alias Mendhak and the witnesses put their signatures. Thereafter, the Gazetted Officer gave verbal orders to me ASI to search the accused and the black coloured polythene bag, having in his hand. On this I ASI searched the accused and the black coloured polythene bag in his hand, during the search the black coloured polythene bag held in the right hand of Amit alias Mendhak abovesaid was opened and checked and 12 vials of WINCEREX were found inside the bag. On checking the batch No. WCCS-3112 was found written thereon, whose photo was taken by me ASI and sent it to the mobile phone of DCO, Rohtak Sh. Mandeep Maan bearing mobile No. 7404013222 from my Mobile No. 9416386554 on his whatsapp who told that I cannot come to the spot due to being busy in some work, I will send my report to you later, I have seen the photographs of the medicines on WhatsApp, all the bottles sent by you on WhatsApp are in the list of banned medicines. All the 12 bottles of WINCEREX were put back in another black colour polythene bag and a cloth parcel was prepared for the bag and a separate parcel was prepared for the empty bag. Then I ASI stamped all the parcels and the bags with my seal RS/3 and sample seal was prepared. The gazetted officer Shri Ashutosh Narwal SDO CONST.S/DIV. 8 ROHTAK also seal the parcels with his seal SK and kept his seal SK with him. After this, ASI handed over his seal after use to EHC Vikas 431/DDR and Shri Ashutosh Narwal SDO CONST. S/DIV. 8 ROHTAK kept his seal with himself. Parcel was taken into police possession as evidence vide recovery memo. Recovery Memo of banned medicine WINCEREX bottle was prepared on which accused Amit alias Madhak and the witnesses endorsed their signatures. The Gazetted Officer attested the parcels, sample seals and the recovery memos. The accused Amit alias Mendhak by keeping in his possession 12 vials of banned WINCEREX without any licence or permit has committed the offence under section 22B (II) (C) / 61/85 of NDPS Act. The complaint is being sent to the police station Old Sabzi Mandi, Rohtak, for registration of the FIR through CT. Parmod 1459/HSR. After registration of the case, the FIR number be intimated. Special reports be sent to the senior officers. For further investigation, another investigating officer be sent on the spot. I ASI alongwith fellow officials and the accused and the case property is present on the spot. Today at Baba Sadanand Mandir Pahara Mohalla, Rohtak. SD Rohtash ASI 1070/RTK HSNCB Unit Rohtak, dated 18.06.2024.”



3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. The petitioner is a taxi driver and it is alleged that 12 vials of *Wincerex* were recovered from the co-accused. He also submits that the petitioner has been nominated on the basis of disclosure statement of co-accused. He further submits that the petitioner has undergone an actual custody of 05 months and 19 days and there are three other cases registered against him, however in one case, he is on bail. He has placed reliance upon judgment rendered by Hon'ble Surpeme Court in Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704, Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954, State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762, Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590, Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023 & Vikrant Singh Versus State of Punjab, CRM-M-39657- 2020” .

4. Per contra, learned State counsel opposes the submissions made by the learned counsel for the petitioner on the ground that the alleged contraband recovered from the conscious possession of the petitioner, falls within the ambit of commercial quantity, as such, in view of the embargo created by Section 37 of the NDPS Act, the petitioner is not entitled to the concession of regular bail. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 05 months and 19 days and there are three



other cases registered against him, however in one case, he is on bail. He on instructions from the concerned investigating officer submits that challan was presented on 18.09.2024 and charges are yet to be framed.

5. Heard the rival submissions made by learned counsel for the parties.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 06.08.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress. The petitioner has been nominated on the basis of disclosure statement. Therefore, the Trial in the present case will not conclude anytime soon. Hence, the further incarceration of the petitioner is not required as a prima facie satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violate of his rights under Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another”, (2018) 3 SCC 22.**

7. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety



bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

9. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

27.01.2025
Kavita

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No