

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-60584-2024

DATE OF DECISION: 27.01.2025

SHAILENDRA CHAUHAN ALIAS SHALENDER CHAUHAN
...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Parul Saini, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

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.41 dated 08.03.2024 under Sections 22(c) of NDPS Act registered at P.S Partap Nagar (Khizarabad), District Yamuna Nagar.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Copy of the writing is as follows: To, SHO Police Station Pratap Nagar District Yamuna Nagar, Jai Hind. Today, myself ASI Mohan Kumar No. 266/AMB along with ESI Satish Kumar No. 601/YNR, HC Rajendra Kumar No. 708/YNR, HC Kuldeep No. 139/YNR, Constable Kamaljeet Singh No. 741/YNR on official vehicle No. HR70GV-7249 Driver thereof was HGH Dinesh carrying along our laptop and printer and investigation Kit were

present at barricading of village Tajewala at 03.20 PM leaving from ANC Yamuna Nagar at 01.15 PM for patrolling and regarding investigation of crime. That secret informer met ASI and gave secret information that Krishan Pal son of Kirat Singh resident of village Tanda police station Mirzapur district Saharanpur Uttar Pradesh, who sells intoxicating tablets and capsules, and today also he is leaving from his village towards Pratap Nagar side via Hathni Rund Bairaj on his motorcycle bearing number HR-71-E- 9395 make SPLENDOR PLUS black colour carrying black olythene containing intoxicated medicines to sell the same and if the blockade is immediately imposed at the turn of park of Bathnikund, then Krishan Pal could be caught along with the drugs and the motorcycle. The informant being reliable person, myself ASI prepared notice under section 42 of NDPS Act and sent it by hand through HC Rajendra Kumar Mo. 708/YNR to the police station Pratap Nagar at 3:30 PM for intimation and for recording the same in the shape of Rapat. Thereafter, myself ASI requested the passersby at the spot to join the investigation or become witnesses in the raiding party, but everyone expressed their compulsion and left the spot. And thereafter, myself ASI along with fellow officials, after preparing the raiding party, reached at the turn of park of Hathni Kund at 03.40 PM on our official vehicle along with secret informer as per his instructions and started laying blockade. After about 10/15 minutes, a motorcycle was seen coming from the side of Hathni Kund Bairaj, which was stopped. Seeing from a distance, the secret informer signaled to myself ASI that the motorcyclist coming from the front is of Krishan Pal and the secret informer got down from the official vehicle and left the spot. Then, myself ASI, as per the information given by the secret informer, signaled the motorcyclist to stop, who, suddenly seeing the police party in front of him, turned his motorcycle back and started moving, then myself ASI, with the help of his fellow officials, nabbed the motorcyclist and asked his name and address, who disclosed his name and address as Krishan Pal son of Kirat Singh resident of village Tanda police station Mirzapur district Saharanpur Uttar Pradesh and on the inspection by myself ASI,



the motorcycle number was found to be HR71 E-9395 make SPLENDOR PLUS black in colour. Myself ASI issued notice under section 50 NDPS Act to Krishan Pal and it was read out to him and asked that there is suspicion that there are drugs in the black polythene hanging on the right side of your motorcycle. You have the legal right to get your polythene searched from a Magistrate or a Gazetted Officer and you are given time to think and understand. After a lot of thinking, he gave his consent to myself ASI that he wanted to get his search conducted from a gazetted officer. The consent form was prepared separately by myself ASI on which the accused and the witnesses appended their respective signatures. After that at 04.00 PM, myself ASI called from my mobile phone number 9495077003 on the mobile phone number 881800122 of Gazetted Officer Shri Mahavir Singh HPS DSP YNR-1 Yamuna Nagar and requested him to reach at the spot after making him aware regarding the situation and he had given his consent regarding reaching at the spot. Upon which Shri Mahavir Singh HPS DSP YNR-1 Yamuna Nagar in his official vehicle reached at the spot along with his staff at 4:40 PM and myself ASI informed the Gazetted officer about the situation at the spot and produced accused Krishan Pal above said and witnesses before him. The Gazetted Officer revealed his identity to the above said accused Krishan Pal and interrogated the witnesses separately and Gazetted officer conducted the personal search of myself ASI as per the rules and from the personal search of myself ASI, nothing incriminating was found. The memo of personal search of employee regarding recovery was prepared and witnesses appended their respective signatures over the same and the memo of search of employee was attested by the gazetted officer. After that, the Gazetted Officer, in his presence, ordered myself ASI to search the recovered polythene black in color in possession of accused Krishan Pal son of Kirat Singh resident of village Tanda police station Mirzapur District Saharanpur Uttar Pradesh. According to the order, myself ASI checked the polythene black in color and upon checking, a total of 40 strips of capsules of



prohibited drugs were found out of the recovered polythene and each strip was containing 24 capsules and a total of 960 capsules were recovered and upon every strip of capsule, Dicyclomine Hydrochloride, Tramadol Hydrochloride, Acetaminophen Capsules mark Spasmo Promax Plus, B.NO C 240014, MFG FEB 2024, EXPIRY JAN 2026, Manufactured in india for SMBIT BIO MEDIX Near vill Surajpur P.O Puruwala Kishanpur, Paonta Sahib Sirmour, Himachal Pradesh 173025, MFG LIC NO 14/UA/2021 and IKON PHARMACHEN PVT. LTD DEHRADUN - 248 197 (UTTARAKHAND) was written. Upon which, myself ASI called Smt. Bindu Dhiman Drug Controller Officer, Yamunanagar at her mobile number 8814972616 and informed her about the situation and asked her to reach at the spot, who had said to myself ASI to take a photo of the written application of recovered Capsules and send it on WhatsApp. Upon which myself ASI clicked a photo of recovered Capsules in my whatsapp at 5:15 PM and after clicking photo of the application, sent on the whatsapp number 8814972616 of Drug Control Officer Yamunanagar. And thereafter, I took out 8 capsules from a stip of recovered intoxicated Capsules and weighed the capsules using an electronic weighing machine from 1/0 kit, which after weighing, found the weight of 8 capsules to be 4.84 kg. The total weight of recovered 960 capsules came out to be 580.8 grams. While weighing the intoxicated capsules with electronic weighing machine, myself ASI took photos from my personal mobile and after getting the photos prepared, action will be taken. At 05.50 PM, Drug Control Officer Yamuna Nagar sent its written report on WhatsApp regarding the above mentioned recovered capsules which is as follows, "The ASI ANC Yamuna Nagar Date 08/03/24 Time 05:27 PM Information received on call and at whatsapp that ASI Mohan Kumar No. 266/AMB that 960 capsules of SPASMO PROMAX Plus (B.NO C240014, MFG 2024 EXPIRY JAN 2026 were recovered from a bike rider near Hathnikund park Mor. The picture of the Label from back of the capsule strip was shared on Whatsapp at 5:16 pm. The same was studied carefully by undersigned to check the composition of the product. The Label of the drug recovered claimed to contain

Dicyclomine hydro chloride, Tramadol hydrochloride and Acetaminophen. Based upon the label claim the undersigned presents the below opinion "The Above mentioned capsules as per label contains" "TRAMADOL" which falls under NDPS Category at Sr. No.238- ZH in the table as per NDPS Act". This opinion is submitted through whatsapp on 08.03.2024 at 5:45PM SD. BINDU DT. 08.03.2024 Drugs Control officer, Yamunanagar. Thereafter, myself ASI prepared the cloth parcel by putting the prohibited drug capsules in the same black polythene and myself ASI got the parcel stamped with 3 stamps bearing impression CK and the gazetted officer stamped it with single stamp impression ML and prepared the sample seal separately. Myself ASI, after using the CRM-M-57386 of 2024 stamp, handed over the same to HC Kuldeep No. 139/YNR and the Gazetted Officer kept the stamp with him after using the same. The parcel containing prohibited intoxicated capsules and recovered motorcycle number HR71 E-9395 make SPLENDOR PLUS black in colour and original motorcycle RC, which was in the name of Nitu son of Rishipal resident of village Rathali Tehsil Bilaspur, which is valid from Bilaspur District Yamuna Nagar Authority from 17-06-2016 to 28-04- 2031, were taken into police custody vide memo of evidence and accused and witnesses appended their respective signature over the memo and the memo of recovery was attested by a Gazetted Officer and then myself ASI carried out a search of the clothes of the above mentioned accused Krishan Pal. From the left pocket of the blue jeans the above said accused was wearing, a mobile phone of brand SAMSUNG golden in color containing SIM number 0859997795 was recovered which was put into a white colour envelope and was taken into police custody. The memo of personal search of accused was prepared separately, which was signed by the accused and witnesses separately. Gazetted officer ATTESTED memo of personal search. Accused Krishan Pal son of Kirat Singh resident of village Tanda police station Mirzapur district Saharanpur Uttar Pradesh, has committed the crime under section 22C of the NDPS ACT by keeping in his possession prohibited narcotic 960 capsules brand Dicyclomine Hydrochloride,

Tramadol Hydrochloride Acetaminophen Capsules without license or permit. Therefore, after making the present writing, the same is sent to the police station by hand through ESI Satish Kumar No. 601/YNR, after registration of the FIR, the number of FIR be informed. The special report of the present PIR be sent to the concerned officer. For the further investigation, ANC Incharge Yamunagar has been informed through mobile phone to send other 10 at the spot as per the orders of the higher officials. Myself ASI is busy in investigation at the spot. Today at the turn of Park Hathni Kund Area Police Station Pratap Nagar. SD: MOHAN KUMAR ASI ANC Yamuna Nagar Date 08.03.202
Time: 06.xx PM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery was effected from main accused Krishan Pal and during interrogation, he named co-accused Ankit Kumar who further in his disclosure statement mentioned the name of the petitioner. He further submits that no recovery has been effected from the petitioner and investigation in this case is completed as challan stands presented on 11.07.2024, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 8 months and 17 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the

petitioner is involved in other FIRs also, moreso, 6000 tablets of Tramadol have been recovered from the petitioner after his name was disclosed by co-accused Ankit Kumar.

At this stage, counsel for the petitioner controverted the submission by stating that in that regard the petitioner was nominated in another FIR No. 48/2024, under Section 22 (C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Kotwali Nagar, Saharanpur in which he has been granted bail vide order dated 30.04.2024 passed in Criminal Misc. Bail Application No.-15037-2024 by High Court at Allahabad (Annexure P-2).

4. Analysis

Be that as it may, having regard to the fact that the petitioner has already suffered sufficient incarceration i.e. 8 months and 17 days, no recovery has been effected from him and similarly situated co-accused has already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 11.07.2024 charges are yet to be framed, out of 20 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “Baljinder Singh alias Rock vs. State of Punjab” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all

probability would land the petitioner in a situation of denial of the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

27.01.2025
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>