



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63811-2024
DECIDED ON: 07.01.2025

JAGDISH SINGH ALIAS DEESHA ALIAS
JAGDISH SNIGH BRAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the third time under Section 439 Cr.P.C. (483 of BNSS, 2023) for grant of regular bail to the petitioner in FIR No.216, dated 21.07.2023, under Sections 22-C, 27 of NDPS Act, 1985, registered at Police Station STF Phase IV (Mohali), District SAS Nagar, Mohali.

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

*Copy of Ruqa, To, the Station House Officer, Police Station Special Task Force, SAS Nagar, Jai Hind. Today myself ASI along with ASI Bhupinder Singh No. 106/BTD, ASI Sukhmandar Singh NO. 1609/BTD, HC Raju Singh No. 2146/Ludhiana, SCT * No. 1402/BTD,*

*PHG Baldev Singh No. 32914, on government Bolero bearing registration No. PBO2-CR * being driven by HC Raju Singh No. 2148/Ludhiara were going from Vegetable Market Bathinda to Awa Basti Bathinda via Ram Bagh Road and when at about 07:00 PM, police party reached near gate of Rambagh then a youngman seeking finding something in a black colour bag near the wall of Rambagh and on looking the police party, suddenly he got perplexed and tried to run from there, who was stopped with the help of associate officials and asked his whereabouts then he disclosed his name as Jagdish Singh alias Disha son of **Singh son of Roor Singh resident of village Chehal, Police Station Sadar Faridkot, District Faridkot. Since the zip of his bag was opened, there • the straps of intoxicating tablets and intoxicating vials were clearly visible in his bag. The efforts have been made to join any public witness in. the police party but everybody has shown their helplessness and had gone from there. Thereafter myself ASI has informed above said youngman about my name and rank and told him that my name is Gurnaio Singh, my belt No. 522/Fezilka, my rank is ASI and I am posted as Investigating Ofrcier in Special Task Force, Bathinda Range, Bathinda. I have doubt that there is some intoxicant material with your of in your black colour bag, therefore the search of you and your bag is required to be conducted, but you have legal right that you can get done the search of you and your bag through any Magistrate or Gazetted officer or you can be produced in same condition before the said officers. IN this regard, notice under section 50 of NDPS Act has been prepared, which is signed by accused and witnesses. Thereafter above said Jagdish Singh @ Disha said that he wanted to get done the search of him and his bag through any Gazetted*

officer. Therefore his non-consent memo has been prepared. Said Jagdish Singh @ Disha has appended his signature on the non -consent memo and witnesses have appended their respective signature. Thereafter at 8.35 PM, myself ASI has made phone call from my mobile Number and made request to Sh. Paramjit Singh, Deputy Superintendent of Police, Special Task Force, Bathinda to come to the spot. At about 9.00 PM, Deputy Superintendent of Police along with his staff came present to the spot and myself ASI has informed him about the facts of case. Hon'ble Deputy Superintendent of Police has also tried to join any public witness in the police party but nobody got ready for the same. Thereafter Deputy Superintendent of Police sir has asked whereabouts from said youngman and after finding the same to be correct, informed above said Jagdish Singh Deesha about his name, rank and posting that my name is Paramjit Singh, I am Gazetted officer of Govt. of Punjab and I am posted in Special Task Force of Punjab Police, Range Bathinda. I have doubt that there is some intoxicant material with you or in your bag, therefore your search is required to be conducted, but you have legal right that you can get done the search of you and your black colour bag through any Magistrate or any other Gazetted officer or you can be taken before them in same condition. IN this regard, the notice under section 50 of NDPS Act has been prepared which is signed by said Jagdish Singhe Disha and witnesses have appended their respective signatures on the said notice: Jagdish Singh @ Disha said that I want to get done the search of me and my bag in your presence. His consent memo has been prepared which is signed by said Jagdish Singh @ Disha and witnesses have appended their respective signatures on the said memo. Thereafter as per the

instructions of Hon'ble Deputy Superintendent of Police, myself ASI has checked the black colour bag of Jagdish Singh Disha then intoxicant vials and strips of intoxicant tablets are recovered from said bag and on counting it, 100 intoxicant vials make OMEREX Cough Syrup, Chlorpheniramine Maleate and Codeine Phosphate Syrup for Batch No. TBHW0607, Mfg: 06/2023, Exp. Date 05/2025, MRP Rs.175.00 (Inclusive of all GST), Mfg. License No. MNB/06/421 manufactured in India for : Embit Bio Medix 100. ML. Vill. Surajpus, Paonta sahib, main road, Sirmour, Himach Pradesh-173025 and counting the strips of intoxicant tablets, 100 strips, each strip contains 10-10 tablets, total 1000 intoxicant tablets, make Cariso Prodol Tablets IP Carisoma Tabletsfidate B. No. CAROVID / Mfg date March, 2023 Exp date Feb. /2026, MRP RS. 53.00 Per Strip of 10 tablets Incl. of all taxes, MEG Lic. No. MNB/07/501 made in India by: WALLACE PHARMACEUTICALS PVT. LTD., Bhatian, Nalagarh, District Solan, HP- 174001, are recovered. The said recovered intoxicant tablets and vials, have been put into same black colour bag and after putting said bag into a cloth bag, turned the same into parcel and sealed the parcel of intoxicant vials and tablets by me with my seal bearing impression GS and also prepared sample of seal. After using seal, the same is handed over to ASI Bhupinder Singh No. 106/Bathinda. The said parcel of case property i.e. intoxicant vials and intoxicant tablets is also sealed by Deputy Superintendent of Police sir with his seal bearing impression P.s and also. attested the case property and prepared sample: of seal. The said parcel of intoxicant tablets and vials along with samples of seal, have been taken into police possession through seizure memo. Accused Jagdish Singh @ Disha and witnesses have

appended their respective signatures on the seizure memo. Deputy Superintendent of Police sir has attested the seizure memo. Thereafter as per the instructions of Deputy Superintendent of Police sir, myself ASI has conducted the personal search of accused Jagdish Singh & Disha, then mobile phone make Vivo touch screen along with SIM No. 79738-03542 from the right side pocket of his Jean pant and one Platinum ATM Card No. 6521 5602 0244 1877 Valid up to 04/227 Jagdish Singh Brar issued from HDFC Bank, one Railway ticket No. 26068637 dated 21.07.2023 time 13:19 from Skoor Basti to Bathinda Junction and currency notes of Rs. 350/- are found from the backside pocket of his pant, which have been taken into police possession through persona search memos. Accused Jagdish Singh @ Disha has appended his signature on the memos and witnesses have appended their witnesses. Deputy Superintendent of Police sir has attested the personal search memos. Accused Jagdish Singh @ Disha could not produce any license or permit to keep the said intoxicant vials and intoxicant tablets and his said offence of keeping intoxicant vials and intoxicant tablets in his possession without any license or permit, is covered under section 22 (c) of NDPS Act.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story 100 vials of cough syrup make Omerex containing codeine and 1000 tablets of Carisoma was recovered from the present petitioner. He further contends that 1000 tablets make Carisoma does not fall within the ambit of the NDPS Act and 100 vials of cough syrup contains not more than

30 grams of Codeine which is intermediate quantity. 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 100 vials of Cough Syrup make Omerex containing Codeine and 1000 tablets of Carisoma were recovered from the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 05 months and 14 days for which the petitioner has suffered incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate. In addition the investigation is complete, challan stands presented to Court on 11.12.2023, charges have been framed on 21.02.2024 and out of total 15 prosecution witnesses 05 witnesses have been examined and 05 witnesses have been given up, 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. DECISION:

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

07.01.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No