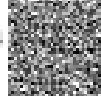


2025.PHHC:016804



236

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

**CRM-M-5544-2025
DECIDED ON: 05.02.2025**

RAJESH KUMAR**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ishmeet Singh , Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG Haryana

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.584 dated 30.08.2023, under Sections 20 of NDPS Act, 1985, registered at Police Station City, District Palwal.

2. Facts

Facts as narrated in the FIR reads as under:-

“To the SHO sir police station city palwal jai hind that today on dated 30.08.2023 I ASI Kushal Kumar with HC Manoj No. 1194, Constable Sandeep No. 478, Constable Ravindra No. 1007 patrolling at Hooda Chowk Delhi Agra Road flyover for prevention of crime and drug abuse. in Palwal and the special informer informed that Captain and Pardeep are coming towards Delhi from Mathura (U.P.) in car canter number RJ-32GB-0932,

after filling coconuts with hemp and covering them with tripaal. If immediate blockade is imposed on NH 19, the above mentioned vehicle along with the ganja can be controlled. On receiving the information about the intoxicating substance Ganja, the ASI prepared a separate written notice and for the information and necessary action, constable Ravindra No. 1007 is being sent to Palwal police station. Near the blockade, I left for NH 19 ahead of Palwal flyover, which I along with my ASI employee reached NH 19 ahead of Delhi bypass, Palwal flyover, and started the blockade, after about 20 minutes from Mathura (U.P.) side towards Delhi. A canter car was seen coming on the road and When the canter driver came near the canter, the canter driver stopped his canter about 10-15 steps before the blockade. After shining the torch on the number plate of the canter, RJ-32GB-0932 was seen written on it. ASI, with the help of his fellow officer, overpowered the canter driver and the man sitting on the conductor seat and checked the number at the front and rear of the canter. But RJ-32GB-0932 was found written on the number plate behind which a tripal was covered. On asking the name and address of the canter driver, the driver gave his name as Captain Yadav, son of Mr. Sardar Singh Yadav, resident of village Bijwad Naruka police station Malkheda district Alwar (Rajasthan) and conductor. The person sitting on the seat told his name as Pradeep Kumar, son of Vinod Kumar, resident of Malkheda police station Malkheda district Alwar (Rajasthan. If there is any suspicion that there is any intoxicant in the person's vehicle or vehicle, a separate notice like Section 50 NDPS should be written to the person informing them that you have the legal right to allow a gazetted officer or area magistrate to search you and your vehicle.. The person gave in writing to the Gazetted Officer regarding the search of his vehicle and the ASI prepared a separate notice under Section 42 of the NDPS Act and sent it to Duty Magistrate Mr. Prashant Kumar SDO DHBVN Hasanpur today in the case of NDPS Act. Constable Ravindra No. 1007

Sent by and I requested the duty magistrate from my mobile number 9050684314 to come to the spot on mobile number 7419701708, after waiting for about an hour, the duty magistrate and constable Ravindra came to the spot and the situation was verbally explained to the duty magistrate. When the duty magistrate searched the car and canter car, he found seven bags of yellow colour plastic under the coconuts covered with tripaal in the rear trunk of the car canter. When all the plastic bags were opened and checked, they were found to be filled with ganja leaves. When the ganja leaves were put back in the same plastic bags and weighed using a computer scale, the weight of bag number 1 was found to be 32 kg, weight of bag number 2 was 28 kg, weight of bag number 3 was 26 kg 200 grams, weight of bag number 4 was 30 kg. 250 grams, weight of Katta No. 5 was 30 kg 100 grams, weight of Katta No. 6 was 28 kg 300 grams and weight of Katta No. 7 was 19 kg 100 grams. Whose total weight was 193 kg 950 grams, all the plastic pieces were sealed by ASI with his seal KK and Duty Magistrate Sahib with his seal AS. which I used my seal with HC Manoj Kumar number 1194 and Duty Magistrate Sahib. Kept his seal with him. The verandah, ganja leaves and the vehicle canter mentioned above were taken to Bajaria Fard police as evidence. The signatures of the accused witnesses and the duty magistrate were obtained on the documents. The above mentioned person has committed crime under section 20.61.85 NDPS ACT by illegally possessing a total of 193 kg 950 grams of ganja leaves in their possession, which is being sent through Constable Sandeep No. 478. Must be informed through form. And the special report of the case should be sent by a special carrier to the service of the area magistrate and officer And it should be sent to 1.0 chance for further investigation.,l along with the ASI, my fellow officers, the accused are present at the opportunity of the case at AJ Near Delhi Bypass Palwal Fly Over NH 19 SD:- KUSHAL KUMAR ASI CIA Staff Palwal Date 29.08.2023 Time 11.50 PM On receipt of AJ police station after

getting Tehri in police station the above case was registered under crime 20-61-85 NDPS ACT special report CCTNS Prepared by computer, special carrier ESI Shyam Chand 47/ is being sent to the service of Palwal area magistrate or senior officer. 10th chance is being sent to Police Constable Sandeep No. 478 or ASI Rakesh CIA Staff Palwal for further action. ”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and the allegation against the petitioner is completely false, baseless on concocted fact and after thoughts. He further submits that main accused Pardeep has already been granted the concession of default bail vide order dated 18.04.2024 passed in CRR-733-2024 and the case of the petitioner is much better footing, as he was roped in merely on the basis of disclosure statement.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases.

4. Analysis

The custody period undergone by the petitioner i.e., 1 year, 4 months and 23 days, wherein investigation is complete, challan stands presented on 20.02.2024, charges are yet to be framed and total 14 prosecution witnesses are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars, wherein “*bail is a rule and*

jail is an exception” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

5. DECISION:

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

05.02.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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