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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22406-2025 (O&M)
DATE OF DECISION: 02.05.2025

BAJRANG NATH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sagar Dangi, Advocate for the petitioner(s).

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 439 Cr.P.C. (Section 483 BNSS) for grant of regular bail to the petitioner in FIR No. 199 dated 09.03.2023 under Sections 29, 20 (b) (ii) (c) NDPS Act Police Station City, Rohtak (Annexure P-1).

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

‘To, Managing Officer Police Station City Rohtak District Rohtak. Today on 09.03.2023, ASI along with HC Sombir No.454/Dadri, HC Sombir No. 443/GGM, HC Haveen No.317/DDR, Constable Raju No. 299/Dadri Haryana State Narcotics Control Bureau Unit Rohtak's Government vehicle No. HR-05GV-3698 model Scorpio driver Constable Sandeep No. 2279/RTK were present for prevention of narcotic drug crime, Hisar Bypass Chowk, Rohtak when a special informer met and



informed that Bajrang Nath resident of Jainath Dera Baland district Rohtak who is a drug smuggler is still standing with the narcotic substance charas/sulpha, wearing saffron clothes and carrying the narcotic substance sulpha, towards Jind Chowk as soon as one gets down from Jind Gate flyover; if an immediate raid is conducted then Bajrangnath resident Jainath Dera Baland district Rohtak can be arrested with a large quantity of narcotic drugs. As the information was definitely from a person, the ASI informed his fellow employees about the information and prepared a raiding party. After that, a report is being prepared under section 42 of the NDPS Act and sent to the city police station of Rohtak in HC case no. 317/Dadri for information. The report should be registered and the copy of the report should be informed with the receipt. The officers should also be informed. After that, the ASI along with his fellow employees reached the place told by the informer in the government vehicle, Jind Phatak flyover, towards Jind Chowk, where a Baba wearing a saffron robe was seen carrying a black NT polythene in his hand, who on seeing the police vehicle started walking towards Jind Chowk, Rohtak with fast steps. The ASI, with the help of fellow employees, controlled the Baba and asked his name and address, he told his name as Bajrangnath alias Sunil son of Jati Nath alias Sadhram resident of Dhanderi district Hisar, presently residing at Jainath Dera Baland district Rohtak. On getting confirmed information of sulpha/charas on the accused, first of all he gave notice to the accused Bajrangnath alias Sunil under section 50 NDPS Act that "I am the investigating ASI Sandeep posted in Unit Rohtak. You are Bajrangnath alias Sunil son of Jatinath alias Sadhram. Information has been received that you have narcotic substances in your possession. Based on which you and the black polythene bag in your right hand are to be searched. You have the legal right that if you want your search and the black polythene bag in your right hand to be conducted in front of a gazetted officer or duty magistrate sir, he can be called on the spot or you can be produced before him along with the polythene bag. The notice has been read out and explained to you. You should be informed of the notice.



accused Bajrangnath alias Sunil put his left hand thumb on the notice and the witnesses put their signatures. On which above mentioned accused Bajrangnath alias Sunil, after listening to the notice under section 50 of NDPS Act, understanding it and expressing his will, got his reply notice under section 50 of NDPS Act written that I am Bajrangnath alias Sunil son of Jatinath alias Sadhuram resident of Dhandari district Hisar, currently resident of Jainath Dera Baland district Rohtak. I want my black coloured polythene bag which I am holding in my right hand to be searched at the spot in the presence of a gazetted officer/Duty Magistrate. You can call him at the spot. I have got the reply notice written after thinking carefully. You have read it out to me or explained it to me. I have understood the notice. On the reply notice, above-mentioned accused Bajrangnath alias Sunil put his left hand thumb impression and the witnesses put their signatures. Thereafter at 4.15 PM, the ASI called on his mobile no. When the gazetted officer appointed by the District Deputy Commissioner, Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak was contacted on his mobile number 94160-46666 from 9813236867, he said that he would reach the spot in a short while. Thereafter, after waiting for some time, gazetted officer Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak arrived at the spot at 5.50 PM. To whom the ASI explained the circumstances and presented notice and reply notice under section 50 NDPS Act. Which was verified by the gazetted officer Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak. Before inspecting the spot, first of all the ASI offered to search himself and his team, who himself searched me and my team. During the search, when no intoxicating substance or thing was found by me or my team members, a search offer and recovery report was prepared. On which accused Bajrangnath alias Sunil and the witnesses signed and gazetted officer Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak verified the report. Then gazetted officer Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak was asked to search the said person, accused Bajrangnath alias Sunil and the black coloured waxy polythene



bag held in his right hand as per rules and take action as per rules. Thereafter, when I carried out the search of said person, accused Bajrangnath alias Sunil, no intoxicant was recovered from the Bhagva chola worn by Bajrangnath alias Sunil. Thereafter, on opening and checking the black coloured waxy polythene bag held in the right hand of Bajrangnath alias Sunil, intoxicant sulphur/charas was recovered in the polythene. When the recovered intoxicant sulphur/charas was weighed on computer scale, the total weight of the recovered intoxicant sulphur/charas was 2 kg 535 grams. After putting the recovered Sulfa in the same black colour polythene, a report was prepared and the report was stamped with his seal SK/3 along with the sample seal was taken into police custody as evidence by the property seizure memo. The accused Bajrangnath alias Sunil put his left hand thumb on the property seizure memo and the witnesses put their respective signatures. After sealing and keeping the sample seal, the sample seal was handed over to HC Sombir No. 454/ Dadri. Thereafter, the gazetted officer Shri Arun Kumar SDE, PROV.DIVISION NO 9 PWD BR Rohtak stamped the report of narcotic substance Sulfa along with the sample seal with his seal RS/1 and kept it with himself after sealing. The gazetted officer Shri Arun Kumar SDE, PROV. DIVISION NO 9 PWD BR Rohtak also verified the report of narcotic substance sulphur/charas along with sample seal and property seizure memos. During the entire proceedings, the general public was asked to participate in the proceedings. But all of them left the spot expressing helplessness without disclosing their name and address. Since accused Bajrangnath alias Sunil son of Jati Nath alias Sadharam resident Dhanderi district Hisar, presently residing at Jajnath Dera Balanda district Rohtak, the above mentioned person has committed the crime under section 20b (ii) C-61-85 NDPS Act by keeping in his possession narcotic substance sulphur/charas weighing 2 kg 535 grams. On which details in writing are being sent through HC Sombir No. 454/Dadri to city police station Rohtak for registration of case. After registration of the case, the



number should be informed. Special report of this case will be sent to senior officers.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that in the present case challan was filed on 25.08.2023, charges were framed on 12.08.2024 and after a lapse of 9 months since then out of 13 PWs, only one PW has been examined till date and this very fact be taken into account while looking into the custody part i.e. 2 years, 1 month and 19 days. He submits that the trial is going at a very slow speed as is evident from the facts mentioned above, other wise the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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.

Learned State Counsel on instructions from the Investigating Officer is not in a position to controvert the submissions made by learned counsel for the petitioner, however submits that the recovery effected in the present case is 2.5 kg charas which falls within the category of commercial quantity.

4. Analysis

Although the quantity of alleged contraband is commercial in nature, but the petitioner has already suffered sufficient incarceration i.e. 2 years, 1 month and 19 days, antecedents of the petitioner are clean,



meaning thereby he is not a habitual offender, 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 25.08.2023 charges stands framed on 12.08.2024 out of 13 prosecution witnesses, only one PW 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 Nimesh 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 “**Balwinder Singh versus State of Punjab and Another**”, **SLP (Crl.) No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion



of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. *It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:*

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

5. **Relief**

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

02.05.2025
anuradha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*