



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CRM-M-8606-2025

Date of Decision : March 19, 2025

MANISH KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Hakam Singh, Advocate
for the petitioner (through VC).
Mr. Surinder Singh Pannu, Addl. AG., Haryana.

SANDEEP MOUDGIL, J. (Oral)**1. Relief sought**

This petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sahinta 2023 (hereinafter referred as B.N.S.S.) for grant of regular bail in FIR No. 628, Dated 19.09.2023, U/s 22(C) and 29 of NDPS registered at Police Station City Sirsa, District Sirsa (Haryana).

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

“To, Duty Officer, City Police Station Sirsa, Jai Hind. Today I, ASI along with EASI Bagga Singh No. 460/FTB, HC Virendra Singh No. 49/FTB, EHC Inderjit Singh No. 2/238 IRB with personal laptop and printer, was present in a government vehicle No. HR05GV-3618, driver EHC Anil Kumar No. 1146/Sirsa, for investigation prevention of drug abuse, at the main gate of Pratapgarh Park, near Bhadra Park, when a special informer met me and informed me that Anil Kumar, son of Surendra Kumar, resident of Jandwala

Mohalla, Sirsa, is involved in the business of selling intoxicant pill. Who is now selling intoxicant pills near his house. If an immediate raid is conducted at the house of Anil above mentioned, then a huge quantity of intoxicant pills can be seized, which I considered to be true and reliable and after informing the fellow employee about the informer, a report was written as per section 42 NDPS Act and sent for information to the Police Station Manager, City Sirsa through EHC Inderjit Singh No. 2/238 IRB, City Police Station, Sirsa. A copy of the report should be registered and the diary should be prepared and the Managing Officer, City Police Station, Sirsa should be informed about the information. I ASI along with fellow employees with personal laptop, printer and passenger vehicle, government number HR05GV-3618, driver EHC Anil Kumar No. 1146/Sirsa, left for the raid as per the information of the house of Anil son of Surendra, resident of Jandwala Mohalla, Sirsa. A young boy was seen standing in Jandwala Mohalla lane holding a black waxy envelope in his right hand. On seeing the police vehicle, the ASI with the help of a fellow official overpowered the young boy along with the waxy envelope and asked his name and address. The boy told his name as Anil Kumar son of Surendra Kumar resident of Jandwala Mohalla Sirsa as per the information given by the informer. On suspecting that he may have some narcotic substance, I made him aware of his legal rights and gave him a notice under section 50 of the NDPS Act that I, ASI Ashok Kumar No. 1155/Sirsa, Haryana State Narcotics Control Bureau Unit Sirsa, hereby inform you Anil Kumar son of Surendra Kumar resident of Jandwala Mohalla Sirsa that I suspect that you may have some narcotic substance with you and in the waxy envelope that is why it is necessary to search you personally and your waxy envelope. You have the legal right that for the search of your personal property and your wax envelope, a nearby magistrate or gazetted officer can be called on the spot. Or you can be presented before him for search along with the wax envelope. You should clarify your situation regarding the search. On which the above mentioned person Anil Kumar wrote in his reply notice 50 NDPS Act that I Anil Kumar son Surendra Kumar resident Jandwala Mohalla Sirsa have read and understood the notice

given to me by ASI Ashok Kumar No. 1155/Sirsa, Haryana State Narcotics Control Bureau Unit Sirsa. I want to call a gazetted officer on the spot and get it searched in front of him for my personal property and the wax envelope in my hand. The reply notice was marked. The notice printed by the printer and the reply notice were signed by the witnesses. On which I contacted Mr. Deepak Makkad, SUPERINTENDENT WORKSHOP GOVT. POLYTECHNIC Sirsa, a gazetted officer appointed by the District Deputy Commissioner Sirsa, on his mobile number 94160-42053 at around 5.30 PM and informed him about the situation and requested him to reach the spot. After waiting, Mr. Deepak Makkad reached the spot at around 5.50 PM. I presented the notice and reply notice and the above mentioned witnesses to Mr. Anil Kumar son Surendra Kumar resident Jandwala Mohalla Sirsa. Mr. Deepak Makkad, after studying the notice and reply notice, searched me as per rules and no evidence was recovered from me. He prepared a separate search report on which accused Anil, I and the witnesses signed. Then the arrested Musmi Anil introduced himself to me and ordered me to search Musmi Anil. As per the orders of Shri Deepak Makkad ji, I carried out the search of Musmi Anil as per rules and no intoxicant was found with him. Then I checked the black coloured waxy envelope in his hand and found 30 boxes of intoxicating pills brand Clonazepam Mouth Dissolving Tablets 0.5 CIAZEPAM-0.5 TABLETS, each box containing 10/10 strips, each strip containing 10/10 intoxicating pills. On counting the total number of 300 packets, total 3000 intoxicating pills were found, on each box or each strip, batch no. MO-7369 Mfg. Date 07/2023 Exp. Date 06/2025 M.R.P. Rs. 34.49 Mfd. By Organic Ltd. Plot No. 4 Phase-1 Indl. Area Tahliwal Tehsil- Hardoli Distt. Una (H.P)-174507 is written. According to the notification, veranda leaves come under the category of NDPS Act at serial number 189. On which the people coming and going in the locality were asked to become witnesses, all of whom expressed their rightful compulsion and left the spot. The veranda intoxicating pills were put in the same black envelope and a separate palanquin was prepared and I stamped the palanquin with my seal AK/3 and Mr. Deepak Makkad stamped it with his seal CH/1. A separate sample seal was prepared. The veranda and the palanquin along with 3000 intoxicating pills were taken into police custody as evidence in the Bajaria property seizure memo, on which the accused Anil and the witnesses signed and Mr.

Deepak Makkad verified the palanquin, intoxicating pills and property seizure memo. Which I handed over the sample seal to HC Virendra Singh No.49/Fatehabad for using my seal and keeping it after that and Shri Deepak Makkad sir kept the seal with himself after using it. The above mentioned accused Anil has committed the offence under section 22C/61/85 NDPS Act by keeping 3000 intoxicant pills in his possession, hence a written complaint for registration of case is lodged with EASI Bagga Singh No.460/Fatehabad, Arsal police station, after registration of case No. be informed by the form and for further investigation other investigator should be sent to the spot. And special report of this case should be sent to the service of Special Carrier, Officer-in-Charge. 1, ASI along with my fellow employees along with the accused and the goods are present at the spot for the case. Today, Jandwala Mohalla Sirsa. Sd/- Ashok Kumar ASI, (ASI Ashok Kumar No. 1155/Sirsa) Haryana State Narcotics Control Bureau Unit Sirsa Date- 19.09.2023 Time- 8.30 PM Mobile No. 94160-42053.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as he has no concern with the alleged offence in any manner and no recovery whatsoever has been effected from the petitioner. He would further submits that the petitioner has no connection with the commission of the present offence and no independent witness has been joined in the present case. He also submits that the petitioner was arrested by the police on 20.9.2023 in FIR No.186 dated 20.9.2023 but was granted bail in the same vide order dated 31.1.2024.

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 the petitioner has actively participated in the commission of crime.

4. **Analysis**

Be that as it may, considering the custody period i.e. 1 year, 3 months and 21 days for which the petitioner has suffered incarceration and in addition to the fact that investigation is complete, challan stands presented to Court on 14.3.2024, charges have been framed on 20.3.2024 and out of total 20 prosecution witnesses, 3 have been examined so far, 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. RELIEF:

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

(SANDEEP MOUDGIL)
JUDGE

March 19, 2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No