



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

207

CRM-M-10705-2025

Date of decision: 07.03.2025

Jaibir

.....*Petitioner*

Versus

State of Haryana

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Virk, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. 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.125 dated 11.06.2020 under Sections 17/27-A/61/85 of NDPS Act registered at P.S Nathusari Chopta, District Sirsa.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ To, the SHO, Police Station Nathusari Chopta, Jai Hind. Today, I, SI, am present at CIA, Sirsa that secret informer came present at CIA Staff, Sirsa and gave information to me that Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk Tukriya, District Mandsaur, Madhya Pradesh, who supplies opium and today he will come for supply in Chopta by carrying opium in his white coloured vehicle ERTIGA bearing No.MP14CB-3749 from Madsaur, if check post is setup near Saim drain Fefana Road, they can be apprehended with Opium and I treated the secret information as true and reliable and written notice under Section 42 NDPS ACT and sent to Sh. Jagdish Kumar Kajla, Deputy



Superintendent of Police, Ellenabad by hand through EHC Hansraj No.982. I, SI alongwith HC Sandeep Kumar, 772; HC Vinod Kumar, 1207; CT. Sunil Kumar, 898; C. Sunil Kumar, THE 976 alongwith my personal Laptop including printer in an official vehicle bearing No.HR-24X-4306 driven by EHC Harish Kumar, 480 proceeded for Fefana Road, near Saim Drain, Village Jamaal in connection with Nakabandi and reached on Fefana Road, near Sam Nala, Village Jamaal and started the checking. After waiting for some time, a white coloured vehicle bearing No.MP14CB-3749 Make ERTIGA was seen coming from the side of Nohar and I, SI signed the vehicle to stop, then driven was just turning his vehicle towards Nohar, then by putting official vehicle in front of the official vehicle, I, SI with the help of accompanied officials captured the vehicle driver including the vehicle and asked his name and address, then the driver told his name as Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk, Turkiya, District Mandsaur Madhya Pradesh, similar to the secret information. On checking the vehicle, white coloured vehicle bearing No. MP14CB-3749 Make ERTIGA, white in colour was found and I, SI on having suspicion of having some intoxicant substance with the vehicle driver and in the vehicle, a notice under Section 50 of NDPS ACT was given to Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk Turkiya, District Manusaur, Madhya Pradesh that I, Satbir Singh, 488/Sirsa, CIA Staff, Sirsa inform you Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk Turkiya, District Mandsaur, Madhya Pradesh through this notice that I have suspicion of having some intoxicant substance with you and in your vehicle No.MP14CB-3749 Make ERTIGA, white in colour, therefore, you and your vehicle are necessary to be searched. You have legal right that any nearest Magistrate or any Gazetted Officer can be called at the spot for your search as well as search of your vehicle or you can be produced before it including your vehicle for search. Make it clear. In his reply to the notice under Section 50 of NDPS Act, driver Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk Turkiya, District Mandsaur, Madhya Pradesh got recorded that I, Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk Turkiya, District Mandsaur, Madhya Pradesh



has read and understood the notice given by you, I was to get myself and my vehicle bearing No.MP14CB-3749 Make ERTIGA, white in colour searched through some Gazetted Officer. Gazetted Officer be called at the spot. Above named accused and witnesses respectively signed the notice and reply to notice printed out through the printer and I, SI from my person mobile contacted Sh. Jagdish Kumar Kajla, Deputy Superintendent of Police, Ellenabad on his Mob. No.88140-11604 and apprised regarding the facts and requested to reach at the spot. The time is about 1.00 PM and after wait, Sh. Jagdish Kumar Kajla, Deputy Superintendent of Police, Ellenabad including his staff and official vehicle reached at the spot and time is about 1.40 PM. 4-5 passersby were asked to join as witness, but all of them while expressing their respective helplessness left from the spot. As per the instructions of Sh. Jagdish Kumar Kajla, Deputy Superintendent of Police, Ellenabad, I, SI conducted the formal search of vehicle driver, Dinesh Kumar son of Mangi Lal, resident of Ward No.6, Mandir Chowk, Turkiya, District Mandsaur, Madhya Pradesh, then no intoxicant substance from the body person was recovered. Then formal search of vehicle bearing No.MP14CB-3749 Make ERTIGA white in colour was conducted, then under the seat of the vehicle, 2 transparent polythene carry bags were found, whose mouth was opened and checked, then from both the polythene carry bags opium was recovered. The recovered opium was weighed with the computerized weighing scale then weight of one of the polythene came to 6 Kilograms including the transparent carry bag and weight of another polythene carry bag came to 5 Kilograms including the polythene carry bag, which comes to total 11 Kilograms. Both the polythene carry bag of the recovered opium were put in two separate plastic boxes and prepared the separate parcels and I sealed the parcel with seal my SS and the Deputy Superintendent of Police, Ellenabad sealed with his seal JK. Parcels of opium and vehicle No.MP14CB-3749 Make ERTIGA, white in colour including original RC were taken into Possession through property seizure memo as evidence. The accused and the witnesses respectively signed the property witnesses seizure memo and Deputy Superintendent of Police, Ellenabad attested the same. I handed over my seal after use and after keeping sample to the



Witness HC Sandeep Kumar, 772 and the Deputy Superintendent of Police, Ellenabad kept his seal with himself. On asking regarding the above recovered opium, above accused Dinesh Kumar told that I have bought the recovered opium from Samrat son of Ramlal Dhangar, resident of Doubra Police Station Narayangarh, District Mandsaur, MP and I had to give the recovered opium to Jaibir son of Sahab Singh, resident of Darba Kalan. So, above accused Dinesh Kumar by keeping total 11 Kilograms opium and Samrat son of Ramlal Dhangar, resident of Doubra, Police Station Narayangarh, District Mandsaur, MP by selling and Jaibir son of Sahab Singh, resident of Darba Kalan by calling the recovered opium have committed the offence under Section 17/27A/61/85 of NDPS Act. Therefore, present writing is being sent to the Police Station by hand through Ct. Sunil Kumar, 898 for registration of FIR, after registering a for case, FIR number be informed and special reports of the present case be sent to the senior officers. Other investigation officer be sent at the spot for further investigation of the case. I, SI alongwith accompanied officials and accused and case property, am present at the spot. At in the area of village Jamal, Fefan Road, near Saim Nala. Sd SI Satbir Singh 488/Sirsa. CIA Sirsa dated 11.06.2020 AT-3.00 PM, Mob.No.94164-89788. On receipt of writing in the Police Station, FIR No.125 dated 11.06.2020, under Section 17/27A/61/85 of NDPS Act, Police Station Nathusari Chopta has been registered and copy of police file including original writing has been sent to the place I/O at the place of occurrence By hand through arrived and SI Om Parkash, 953, Incharge, Police Post Jamaal has been informed through phone for reaching at the spot for further action and special reports of the present case are being sent to the Duty Magistrate and Senior Officers through e-mail ID.”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case as no direct recovery has been effected from him. Name of the petitioner has surfaced in the disclosure statement of co-



accused Dinesh Kumar and that in fact Dinesh Kumar had purchased the contraband which was to be supplied to the present petitioner. It is submitted that the petitioner is behind bars for the last 02 years, 06 months and 13 days and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as only 07 prosecution witnesses out of 27 have been examined.

On behalf of the State

4. The 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 02 years, 06 months and 13 days. Challan was presented in this case on 03.08.2021, charges were framed on 21.09.2021 and 07 prosecution witnesses out of total 27 have been examined.

Analysis

5. Be that as it may, considering the fact that nothing is to be recovered from the present petitioner coupled with the fact that no incriminating material with regard to recovery of the alleged contraband has been put up before this Court and that the petitioner has suffered sufficient incarceration for almost 02 years, 06 months and 13 days, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”

6. 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 as 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 Khaton and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 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**

07.03.2025

manoj

1. Whether speaking/ reasoned : Yes /No
2. Whether reportable : Yes /No