



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

241

CRM-M-751-2025

DATE OF DECISION: 16.01.2025

RAMAKANT THAKUR

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Punam Singh, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

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

This petition has been filed under Section 483 B.N.S.S. for grant of Regular Bail to the petitioner in FIR No. 384 dated 07.11.2023 registered under Sections 20(b)(ii)(B) of NDPS Act, 1985 [Section 21(b)(ii) (B) (C) and Section 29 NDPS Act, 1985 added later on] at P.S. Sector-53, District Gurugram, Haryana (Annexure P-1).

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

'To Mr. SHO Sahib, Police Station Sector 53, District Gurugram, Jai Hind Mr., today on 07-11-2023, I am present in the area of Police Station Saraswati Kunj Sector 53, Gurugram Crime Investigation after receiving information from the informant of ASI Jitendra 832/GGM, Constable Gautam 4308/GGM that the informant informed that a person named Ramakant son of Jamun Thakur, resident of village Fatehabad, Police Station Paru, District Muzaffarpur, Bihar, who sells narcotics in Saraswati Kunj Sector 53, and today he is in a vehicle number BR06BR3940, white in color, and is trying to sell the narcotic substance hashish. If a raid is conducted immediately, the drug can be caught along with the



person and as the information was credible, I prepared a report under Section 42 NDPS and sent constable Gautam 4308/GGM to the police station to inform the higher authorities. I also informed gazetted officer Shri Dinesh Sharma, ETO and manager, police station Sector 53 over the phone. I also informed a fellow employee about the information and prepared a raiding party and I stopped the passersbys and requested them to join the raid but everyone expressed their helplessness and went to their destination and due to lack of time, no notice could be given to anyone. I, along with S.S. Sub-Inspector, fellow employee and confidential informant, reached Saraswati Kunj Sector 53 where the informant pointed towards the car number BR06BR3940 parked there from about 30/40 steps ahead and told that a person named Ramakant is sitting in this car. He has the narcotic substance hashish. On which I dismissed the informant by giving properInstructions. And I, along with my companion, reached the said parked vehicle and checked it. There was a person sitting on the back seat of the vehicle. When I overpowered him and asked his name and address, he told me his name as Ramakant son Jamun Thakur, resident of village Fatehabad, Thana Paru, District Muzaffarpur, Bihar, aged 45 years. I gave him a notice under 50 NDPS Act that Ramakant, the above mentioned, is informed through this notice that there is a suspicion of the presence of narcotic substances in your vehicle. It is necessary to search you. You want your search to be done by a gazetted officer or magistrate or by me. It is your legal right. As per your wish, a gazetted officer/magistrate can be called on the spot. Ramakant, after understanding the above mentioned notice in his language, in his reply notice agreed to call a gazetted officer on the spot to get his or his vehicle searched by a gazetted officer. Ramakant and the witness signed the reply notice. After that, I informed Inspector Rajendra Singh of Sector 53, Gurugram about the entire situation through mobile phone and requested him to inform the concerned gazetted officer about reaching the spot. After some time, Mr. Dinesh Sharma of ETO, Gurugram arrived at the spot. I informed ETO sir about the entire situation and gave him notice under section 42 of the NDPS Act. ETO sir read the



notice and introduced himself to the above arrested person. Ramakant understood the notice in his own language and gave his consent to the search of himself and his vehicle by ETO sir. After that, ETO sir Mr. Dinesh Sharma searched the above arrested Ramakant. No items were recovered from his body. When the white plastic sheet kept under the seat behind the driver's seat was taken out and checked, we found a narcotic substance called hashish inside it. ETO sir and I smelled and checked it with our own experience, and the substance appeared to be Charas, and electronic scale was arranged and the drug Charas was weighed along with the polythene, and the total weight including the polythene came out to be 193 grams, about which Ramakant was asked for a license or permit for keeping the above mentioned narcotic substance, but Ramakant was unable to present license or permit for the same. The recovered narcotics substance Charas was wrapped along the polythene in a cloth, after that I, Sub-Inspector Jitender put a stamp of JK and ETO Sir put a stamp of MK. ETO sir took the stamp in his own authority after use and I handed over my stamp to Ct. Gautam no. 4308/GGM. After this ETO sir verified the parcel. Narcotic substance Charas was taken into police custody through list of receipt of parcel. Constable Gautam no. 4308/GGM has signed the list of receipt, which was verified by ETO sir. The above mentioned Ramakant has committed the crime of 20 (b) (ii) (B) NDPS Act by keeping 193 grams of hashish in his possession, on which constable Gautam ▶ No. 4308/GGM is being sent to the police station to prepare the article and to get the FIR registered. After registering the FIR, inform at the spot with FIR number form and I ASI, am the complainant in the present case, hence another investigation officer should be sent for further investigation in the case. I ASI, am busy in investigation at the spot Place- Saraswati Kunj Sec 53 GGM SD/- Jitendra S.O.P.N. Police Station Sector 53 District Gurugram Date 07-11-2023 Time 7.50 PM.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the alleged recovery of 193 grams of Charas at the first instance was effected from the vehicle lying in white coloured plastic sheet, was beneath the driver's seat whereas recovery of contraband i.e. 1049 grams charas has been falsely fastened upon the petitioner and the same was recovered from a tin shed which was neither owned, rented nor possessed by the petitioner in any capacity including the tenant whatsoever. It is on that account, the bail has been sought with further assertion that after filing of the challan on 16.03.2024 and charges being framed on 18.07.2024, trial is moving slowly as only 2 PWs out of total 33 PWs have been examined till date. He further points out that the petitioner is not involved in any other case, meaning thereby he is not a habitual offender.

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. According to which, the petitioner is behind bars for 1 year, 2 months and 4 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the quantity involved in the present case is commercial in nature but is not in a position to controvert the submissions made by learned counsel for the petitioner.



4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 2 months and 4 days, the part recovery i.e. 1049 grams of charas is although doubtful and the evidence by the petitioner is still to be established in this regard, 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 16.03.2024 charges are framed on 18.07.2024 and out of 33 prosecution witnesses, only two PWs have 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 serve 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 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 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

16.01.2025

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*