

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-3510-2025 (O&M)
DATE OF DECISION: 27.01.2025

KHARAK SINGH @ KHARKU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Riffi Birla, Advocate for the petitioner(s).

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in FIR No. 131 dated 02.08.2023 registered under Section 22-C/61/85 of NDPS Act, police station City Muktsar Sahib, District Sri Muktsar Sahib.

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

‘Station House officer, Police station City Sri Muktsar Sahib, today, I ASI alongwith constable Kewal Singh No.228/SMS were going on a government vehicle No. PB-35-0861, which was driven by Constable Sukhmander Singh No. 146/SMS regarding patrolling and checking of suspicious persons reached turn of road Gobindngari/SMS, then one clean cut surd person was seen standing on the left side of the road from the front side, who tried to ran away after throwing the plastic bag in his hand then I ASI with the help of fellow companions apprehended and enquired about his name and address, who disclosed his name as Kharak Singh Kharku son of Angrej Singh @ Gajjan Singh son of Amar Singh resident of Boorwala, P.S. Amir Khas, District Fazilka and



some intoxicant substance seems to be lying in the polythene bag thrown by him. I ASI being of local rank cannot carried out proceeding under NDPS Act therefore, written information was sent through C. Kewal Singh 228/SMS to police station to send regular NGO on the spot for further proceedings and I ASI alongwith apprehended person is present near plastic bag thrown by him and on receipt of ruga information in the police station SI Laljit Singh NO. 1215/Fzr. Incharge officer police station City Sri Muktsar Sahib entered rapat NO. 42 dated 02.08.2023 in Roznamcha forwarded original ruga information alongwith copy of rapat for further proceeding to ASI Balwinder Singh NO. 158/SMS and instruction ASI Balwinder Singh alongwith constable Kewal Singh NO. 288/SMS to reach the spot and carry out further proceeding on which ASI Balwinder Singh alongwith fellow companions alongwith investigating kit, laptop, printer and reached on the spot on a private vehicle, where, ASI Jagsir Singh No. 810/SMS alongwith police party alongwith apprehended person was found present. ASI Jagsir Singh apprised ASI Balwinder Singh about the situation and apprehended person Kharak Singh @ Kharku alongwith plastic bag thrown by him was handed over to ASI Balwinder Singh, ASI Balwinder Singh No. 158/SMS tried to join public witness on the spot in the police party but no one agreed and everyone expressed their difficulty. Then I ASI Balwinder Singh disclosed my identity to apprehended person that I Balwinder Singh ASI is posted at police station city Sri Muktsar Sahib and I am wearing Uniform and name plate is affixed on the uniform. ASI Balwinder Singh enquired about the name and address of apprehended person in the presence of fellow companions, who disclosed his name as Kharak Singh Kharku son of Angrej Singh Gajjan Singh son of Amar Singh r/o Boorwala, District Fazilka, on which ASI Balwinder Singh said to accused Kharak Singh Kharku aforesaid in isolation that there is doubt of some intoxicant substance in your possession and polythene bag thrown by you, due to which search is to be conducted of your and polytene bag thrown by you, but you have right under NDPS Act, you can get your search and search of polythene bag thrown by



you from any Gazetted officer or any Magistrate, who can be called on the spot. On which accused Kharak Singh @ Kharku aforesaid said that you can conduct my search as well as search of polythene bag thrown by him. I have faith upon you. I do not want my search to be conducted from any Magistrate or Gazetted officer, on which ASI Balwinder Singh after preparing notice under section 50 of NDPS Act was read over to him, who on hearing the same and finding it to be conducted signed in Punjabi on the notice and witnesses put their witness on it. Then ASI Balwinder Singh conducted search of polythene bag thrown by Kharak Singh @ Kharku aforesaid then total 95 strips of intoxicant tablets were recovered from plastic bag 10/10 tablets were there in each strips, totalling 950 tablets mark Clovidol 100-Sr, Tramdal Hydrochloride tablets IP 100 Mfg B.NO. EJT 3004 M.D. 01/2023 and E.D. 12/2025 MRP Rs.192.50 for 10 TABS. L.A.T. were recovered then ASI Balwinder Singh conducted personal search of accused Kharak Singh @ Kharku aforesaid in accordance with law then no other illegal thing was recovered from the personal search of accused Kharak Singh @ Kharku aforesaid and Rs.100/- currency notes were recovered from right pocket of black colour trouser worn by him. Apart from this, no mobile, jewellery etc was found from his clothes. Accused Kharak Singh @ Kharku could not produce any license or bill etc. regarding recovered intoxicant tablets. The recovered intoxicant tablets were put in the same plastic bag and parcel was prepared and parcel was duly sealed by ASI Balwinder Singh with his seal BS and sample seal was prepared separately. Seal after use was handed over to ASI Jagsir Singh NO. 810/SMS, the parcel of recovered intoxicant tablets duly sealed and sample seal were taken into police possession vide recovery memo as a proof. Witnesses put their witness on it. Accused Kharak Singh @ Kharku aforesaid by keeping in his possession 950 intoxicant tablets has committed an offence under section 22-C/61/85 of NDPS Act, on which ruqa against Kharak Singh @ Kharku son Angrej Singh @ Gajjan Singh son of Amar Singh, resident of village Boorwala, P.S. Amir Khas, District Fazilka through constable Kewal Singh 228/SMS to police station



regarding registration of FIR. ASI Balwinder Singh alongwith fellow companions after doing investigation in the aforesaid FIR came back at the police on 03.08.2023 and accused in the present FIR Kharak Singh Kharku aforesaid alongwith case property, one parcel of plastic bag in which there were total 95 strips of intoxicant tablets 10/10 tablets of each strips totalling 950 tablets mark Clovidol 100-Sr, Tramdal Hydrochloride tablets IP 100 Mfg B.No. EJT 3004 M.D. 01/2023 and E.D. 12/2025 MRP Rs.192.50 for 10 TABS. L.A.T. intoxicant tablets duly sealed with seal BS before SI Laljit Singh NO. 1215/FZR incharge officer police station. SI Laljit singh incharge officer. ‘

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. She submits that nothing has been recovered from the petitioner and the alleged recovery of 372.40 grams of contraband (950 tablets of Clovidol 100 SR and Tramadol Hydrochloride tablets) was recovered from the co-accused. She further submits that investigation in this case is complete as challan stands presented on 29.01.2024, charges have been framed on 01.10.2024 and out of 16 PWs only one PW has been examined, meaning thereby conclusion of trial would take long time, 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. According to which, the petitioner is behind bars for 1 year, 5 months and 22 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in many other FIRs, meaning thereby he is a habitual offender, 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, 5 months and 22 days, nothing is to be recovered from the petitioner, the alleged recovery was effected from the co-accused 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 29.01.2024, charges have been framed on 01.10.2024 and out of 16 PWs 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 fundamental principle of law that right to speedy trial is a part of

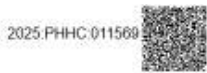


reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference 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 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 land the petitioner in a situation of denial of the concession of bail.

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

27.01.2025
anuradha

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