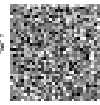


2025.PHHC.018505



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

**CRM-M-4523-2025 (O&M)
DECIDED ON: 07.02.2025**

SEEMA**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Simsi Dhir Malhotra, Advocate and
Mr. R.P. Dhir, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)**CRM-4048-2025**

Application is allowed, as prayed for.

The copy of order dated 28.01.2023 is placed on record as
Annexure P-15.

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 265, dated 16.12.2023, under Sections 22/29 of NDPS Act, 1985, registered at Police Station Mahilpur, District Hoshiarpur.

2. Facts

Facts as narrated in the FIR reads as under:-

*"The SHO PS Mahilpur, Hoshiarpur, "Jai Hind". Today I ASI along with
LR/ASI Balvir Singh 1154/HPR, LR/ASI Manjit Singh 1577/HPR, SR/CT*

Ankush 1725/HPR, SR/LC Rekha Rani 1077/HPR and PHG Sahil 26960 along with laptop, printer and investigation kit along with my companions were on private vehicle in connection with checking of bad elements and vehicles and were going from City Mahilpur on Langeri Road when police party reached on the turning of near Dargah Peer Baba Nau-Gajja Shah and on the left side of road one lady who had covered her face and was holding one weighty envelope of black colour in her hand. On seeing the police party, she became perplexed and the plastic envelope of black colour which she was holding in her hand thrown and turn back and started moving hurriedly towards left side of the road. On this I ASI with the help of my companions on the basis of suspicion apprehended her and on inquiry she told her name Manjit Kaur W/o Kuldeep R/o Langeri Road, Ward No. 08, Mahilpur, PS Mahilpur, Distt. Hoshiarpur. I ASI acquainted him that lady with my identity and told that my name is ASI Dilbag Singh and posted at Police Station Mahilpur, Distt. Hoshiarpur as an investigating officer and entire police party with me in uniform and are from PS Mahilpur and their name plate on the uniform of every officials. So, I am suspecting some intoxicant substance with you. So, your search as well as search of plastic envelope of black colour which was thrown on ground is to be conducted. But you had a legal right to get your search as well as search of the glazed envelope in the presence of any Magistrate or Gazetted officer and if you so desire arrangement can be made on the spot. On this Manjit Kaur lady who was apprehended told me ASI that she had full faith in you and you could get the search conducted mine as well as the black colour glazed envelope which was thrown. Consent memo of Manjit Kaur was prepared separately on the Spot. Notice u/s 50 of the NDPS Act was served to Manjit Kaur. On the consent memo as well as notice u/s 50 of NDPS Act Manjit Kaur put her right thumb impression whereas LR/ASI Balvir Singh 1154/HPR, LR/ASI Manjit Singh 1577/PR put their signatures as witnesses. Prior to search an attempt was made to join an independent witness but everybody showed their helplessness and nobody from the public was ready to join the police party. Then I ASI in the presence of first of all search of glazed paper of black colour which was thrown by Manjit Kaur above said was conducted and on opening the mouth the intoxicant powder was recovered from it. Then I ASI weighted the same intoxicant powder from digital kanda which was in my investigation kit and it came to be 115 grams. ASI put his seal DS and same was taken in possession vide recovery memo. Sample seal of DS was prepared and seal after use was handed over to LR/ASI Balvir Singh 1154/HPR. Accused Manjit Kaur W/o Kuldeep R/o Langeri Road, Ward No. 08, Mahilpur, PS Mahilpur, Distt. Hoshiarpur by keeping in her possession

115 grams intoxicant powder committed an offence u/s 22/61/85 NDPS Act. Ruqa was written and same was sent through PHG Sahil 26960 to police station Mahilpur for the registration of the case. After registration of the case number of the case be made known. Special reports be sent to Ilaqa Magistrate and superior officers. Control room be informed. I ASI along with companion is busy on the spot. Sd- Dilbag Singh ASI PS Mahilpur, District Hoshiarpur dated 16-12-2023 today in the area of Langeri Road Mahilpur at 05:15 PM.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement suffered by co-accused namely Manjit Kaur on 17.12.2023. He further submits that recovery of contraband i.e., 115 grams of Alprazolam was not effected from the conscious possession of the petitioner.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 3 months and 2 days and the petitioner was nominated merely on the basis of disclosure statement and no recovery was effected from the conscious possession of the petitioner added with fact that investigation is complete challan stands presented on 24.09.2024 and charges have been framed on 24.09.2024 and out of total 14 prosecution witnesses, none has been examined so far, meaning thereby conclusion of trial shall take sufficient time, no useful

purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal)***

131. 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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

5. **DECISION:**

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

07.02.2025

Meenu

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