

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-3376-2025

DATE OF DECISION: 27.01.2025

JASPREET SINGH ALIAS JASS

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipin Mahajan, Advocate for the petitioner(s).

Mr. Rajiv Verma, DAG, Punjab.

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

This petition has been filed under Section 439 Cr.P.C. for Grant of Regular Bail to the petitioner in FIR No. 06 Dated 23.02.2024 Under Section 21(b), 27-A, 29-61-85 of NDPS Act and 25-27-54-59 of Arms Act, 1959 Registered at Police Station Tibber Tehsil and District Gurdaspur (Annexure P-1).

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

‘SHO, Police Station Tibber. Jai Hind. Today, myself/ASI along with ASI Mohinder Pal 122, ASI Gurnam Singh 1294, ASI Jodh Singh 338, HC Admin Masih 816; PHG Dharam Singh 584 along with laptop, printer, investigation kit, in connection with search for bad elements, during barricading was present on Ainjla byepass, then, four young non-sikh persons, occupying one Maruti 800 car bearing no. PB06E5788 of white colour, were going from



Babri bypass towards the side of Pathankot, who, on seeing the police party, abruptly tried to take U-turn and the person sitting towards driver side, while tried to flee away by opening the window of the car and while throwing a polythene envelope being carried in his right hand, along with other occupants of the car were nabbed with the help of fellow officials. Myself/ASI, after disclosing my name, rank and posting to the aforesaid persons, asked them about their names and addresses, upon which the person holding polythene envelope disclosed his name as Navjot Singh son of Balbir Singh resident of Bhagwal, Police Station Qila Lal Singh, District Gurdaspur; car driver disclosed his name as Sukhjinder Singh alias Chhotu son of Gulzar Singh, resident of Kaler Kalan, Police Station Sekhwan, District Gurdaspur; person seated on rear seat towards left side disclosed his name as Jaspreet Singh alias Jass, resident of Bhagowal, Police Station Qila Lal Singh, District Gurdaspur, and the person sitting on rear right side of car disclosed his name as Sarwan Singh son of Narinder Singh, resident of Kaler Kalan, police station Sekhwan, District Gurdaspur. Before checking of the polythene envelope being carried by Navjot Singh in his right hand, myself/ASI tried to join some public witness by asking about 4/5 passerby public persons, but, every one expressed his inability and did not join the police party. On this, in the presence of fellow official, 1, opened the envelop and on checking of the same, heroin was recovered therefrom. Myself/ASI asked aforesaid persons that there is suspicion about availability of other narcotic substance with you. You are having a legal right that you may get conducted your search as also search of the car being possessed by you from some Magistrate or some Gazetted Officer and I can call him on the spot, who stated that the heroin which was being possessed by you, the same has already been recovered by you and except this we do not possess any other narcotic substance and that we have full faith upon you and you may conduct search of us as also of the car being possessed by us. On this, consent memo was prepared, which was witnessed by the witnesses and aforesaid appended persons, namely, Navjot Singh, Sukhjinder Singh alias Chhotu; Jaspreet



Singh alias Jass and Sarwan Singh appended their respective signatures. On this, myself/ASI conducted person search of aforesaid appended persons, namely, Navjot Singh, Sukhjinder Singh alias Chhotu; Jaspreet Singh alias Jass and Sarwan Singh, one by one, in accordance with rules but, no other narcotic substance was recovered from them. While conducting personal search of Jaspreet Singh alias Jass resident of Bhagowal, Police Station Qila Lala Singh, District Gurdaspur, from right pocket of his wearing trouser, a computerized scale was recovered, which was taken into police possession vide separate memo and Maruti 800 Car bearing no. PB-06-E- 5788 of white colour was taken into police possession vide recovery memo. Search of Maruti 800 Car bearing no. PB-06-E-5788 of white colour was conducted, as per rules and from the dicky of the car one Double Barrel Gun no. 38383-05 along with 15 live cartridges were recovered. I weighted the recovered heroin with computerized scale and weight of heroin along with envelope came to be 70 gm, which after putting into a plastic box, a cloth parcel was prepared and the parcel was sealed, on the spot, with Balwinder Singh with my own seal bearing impression BS by affixing 01 seal thereupon and the aforesaid parcel of case property, vide recovery memo, was taken into police possession. Sample seal was prepared separately. Seal, after use, was handed over to ASI Mohinder Pal 1222. Aforesaid appended persons, namely, Navjot Singh, Sukhjinder Singh alias Chhotu; Jaspreet Singh alias Jass and Sarwan Singh by retaining in their possession 70 gm heroin and 01 Double Barrel Gun no. 38383-05 along with 15 live cartridges have committed a crime under sections 21-B/61/85 of NDPS Act and 25-27-54- 59 of Arms Act, therefore, present rukka, after scribing, for registration of FIR, through PHG Dharam Singh 584 is being sent to police station. After registration of FIR, number of FIR be informed. Special reports, after issuance, be sent to the higher officers. Information be conveyed to Control Room. Myself/ASI along with fellow officials, am busy in investigation on the spot. Sd/- Balwinder Singh, ASI, P.S. Tibber. Place: within the area of Ainjla Bypass AT 10:55 PM. Dated 23.2.2024. Place: Police Station: By this time,

aforesaid FIR qua aforesaid crime, after registration, copy of FIR along with original writing, through coming HCare being sent to ASI, who is busy in investigation on the spot. Special reports, after issuance, through ASI Kuldeep Singh 889 are being sent to the higher officers and Area Magistrate Sahib. Information is being conveyed to Control Room through wireless. Entry Rpat no. 27 dated 23.2.2024'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case as nothing has been recovered from him and the allege recovery of 70 grams of Heroin was recovered from co-accused namely Navjot Singh and the alleged drug money was recovered from co-accused namely Sharwan Singh. He has argued that the antecedents of the petitioner are clean, therefore, pray 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 10 months and 29 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that double barrel gun was recovered from the petitioner.

At this stage, counsel for the petitioner submits that the double barrel gun pointed out by learned State Counsel was a licensed weapon and was kept in dicky of the car.

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. 10 months and 29 days, nothing has been recovered from him, 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 09.08.2024 charges stands framed on 16.10.2024 out of 11 prosecution witnesses, only 01 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



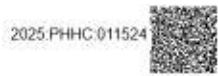
are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In 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.

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>