

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

234

CRM-M-3994-2025
DATE OF DECISION: 04.02.2025

LAKHVIR SINGH ALIAS LAKHU ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Gill, Advocate for the petitioner(s).

 Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

 This petition has been filed under Section 483 of BNSS for grant of regular bail in FIR No. 33 dated 14.04.2024 under Section 15 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (subsequently added Section 29 of the NDPS Act) at P.S. Dirba, District Sangrur.

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

 ‘Copy of Ruqa, "SHO Police Station Dirba, Today I SI along with HC Gurdeep Singh 160/Sang, HC Gurmeet Singh 916/Sang, C. Bharpur Singh 744/Sang and C Kuldeep Sharma 683/Sang along with laptop, printer were riding Government vehicle bearing registration No. PB-13-BE-3707 being driven by C. Anwar Khan 817/Sang and were going on Dirba Kohrian road towards Village Camper in connection with patrolling duty as well as in search



suspicious persons and suspicious vehicles. At about 07:30 AM when the police party reached about 2 km from Dirba in the area of Camper, then a truck number PB-13-BE-6302 brand Ashok Leyland was seen standing, in which two young men were seen sitting in the cabin of the truck carrying a heavy plastic bag. On suspicion I SI reached near them and by stopping vehicle apprehended above said persons with the help of colleagues and asked about their name and address and the person sitting on a driver seat disclosed his name Lakhvir Singh alias Lakhu son of Jarnail Singh resident of near Hari Om Palace Rogla police station Dirba and the person sitting on conductor side disclosed his name as Amritpal Singh alias Sukhchain son of Jagtar Singh resident of Ratto ke police station Longowal. The cabin of Ashok Leyland truck number PB-13-BE-6302 was searched and after checking 4 bags of plastic weights with their mouths open, in which poppy husk was visible. I SI made an attempt to join a private witness in the investigation, but no private witness joined the investigation due to their personal problems. Then I SI prepared the prepared the different notice u/s 50 of the NDPS act regarding the search of Lakhvir Singh @ Lakhu and amritpal Singh @ sukhchain Singh and truck in their possession and 4 plastic bags placed in the cabin of the above numbered truck. Lakvir Singh @Lakhu and and Amritpal Singh @ Sukhchain Singh marked their signatures on it and HC Gurdeep Singh 160/Sang and HC Gurmeet Singh 916/Sang: singed on it as witnesses. Then I SI checked the 4 bags of plastic color white belonging to Lakhvir Singh alias Lakhu and Amritpal Singh alias Sukhchain placed in the cabin of above numbered Truck. From which Poppy husk was recovered, which was weighed with electronic scale and which was found 25/25 kg total 100 kg of poppy husk including plastic bags. Which were numbered from 1 to 4 respectively. Then I SI prepared 4 Parcel of the recovered poppy husk in the same plastic bags. I Stamped all the 4 parcels with my seal letter PS. Sample stamps prepared separately. After using the stamps, the stamp was handed over to HC Gurdeep Singh 160/Sang. Then I SI checked the truck of the above said accused persons bearing number PB-13-BE-6302



mark Ashok Leyland, then from the cabin of the truck, then the bills of the loaded goods were recovered and according to the bill number 6737 dated 12-04-2024 TAX INVOICE NO. TRNS/G/2425/0027 dated 12.04.2024 through Deepak Spinners Limited Pagara Guna M.P. Issued in the name of Abadi Jujhar Singh Nagar Rahon Road, Ludhiana, from which 184 Bags Yarn are loaded and total value of Rs. 13,53,234/ is shown. The goods are loaded inside the body of the truck as per the bills. Then I ASI taken 4 bags of plastic 25/25 kg of poppy husk duly stamps, including sample stamps, truck number PB13-BE-6302, mark Ashok Leyland, loaded with the above said goods Along with the tarpaulin and the rope, the bills were taken into possession of the police as evidence by preparing separate recovery memo. HC Gurdeep Singh 160/Sang: and HC Gurmeet Singh 916/Sang: gave their own testimony as witnesses. Lakhvir Singh alias Lakhu and Amritpal Singh alias Sukhchain by keeping poppy husk in their possession complete the ingredients of committing the offense under section 15/61/85 ND&PS ACT, so I SI by writing a Ruqa for registration of FIR under section 15/61/85 ND&PC ACT against Lakhvir Singh @ Lakhu and Amritpal Singh alias Sukhchain above is being sent to the police station Dirba by hand through constable Kuldeep Sharma 683/Sang. After registration of FIR, the number of FIR be intimated. Control room Sangrur be informed. I SI alongwith colleagues are busy in the investigation. Area Village Camper at 10 AM. Sd/- Prem Singh ASI CIA Sangrur. Dated 14.04.2024. after receiving the ruqa FIR under the above said sections against above said persons has been registered. Records were maintained. Original ruqa along with copy of FIR is being sent through C Kuldeep sharma 683/Sang to ASI Prem Singh 1598/Sang CIA Sangrur for further investigation. Incharge control room is being informed through E-mail...."

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. He submits that



no recovery has been effected from the conscious possession of the petitioner. He further submits that the alleged recovery of 100 kg of poppy husk was recovered from 4 plastic bags lying in the cabin of the truck. He further submits that out of total 19 PWs, 8 PWs have already been given up and none has been examined till date, investigation is complete as challan stands presented on 03.10.2024 which prove that conclusion of trial would take 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 9 months and 17 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 one more FIR, 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. 9 months and 17 days, nothing has been recovered from the conscious possession of the petitioner 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 03.10.2024 charges stands framed on 05.10.2024 out of 19



prosecution witnesses, none 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 *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 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

04.02.2025
anuradha

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