



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4133-2025
DECIDED ON: 27.02.2025

MANIK ALIAS MANAK

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Puri, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, for grant of regular bail, in case bearing FIR No. 0087, dated 27/12/2023, under Section 21, 29, 61, 85 of NDPS Act of PS Taragarh, Pathankot.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“SHO PS Taragarh "Jai Hind" I SI alongwith ASI Jagdish Singh 821/GU, ASI Naresh Kumar 1261/P, ASI Balbir Singh 1243/P, SCT Kuldeep Kumar 223/P, vide government vehicle bearing no.PB65-BF-2364 its driver CT Pritpal Singh 769/P was present in village PahadoChak in connection with patrolling and search of bad elements, that secret informer met and gave information that Sachin S/o Dilbagh Chand and Manak S/o Paramjit Kumar resident of

Mohalla Sansiyan Behrampur, PS Behrampur, District Gurdaspur are aged about 22-23 years and having Mulha fashioned, out of them Sachin has kept long hairs and does the work of selling heroin and today also aforementioned both boys are coming from Parth Kaichak side towards Village Pahado Chak while riding scooty bearing no. PB06-BD-9175 colour blue. In case now checking is conducted while installing brigades then aforementioned Sachin and Manak could be apprehended along with heroin. As this information is firm and reliable, offence under Section 21-61-85 of NDPS Act is made out against the aforementioned persons. After writing ruga same is being send to PS Taragarh for registration of FIR through SCT Kuldeep Kumar 223/P. After registration of case number be intimated and as per Section 42 NDPS Act its intimation is being send before Hon'ble Superintendent of Police PBI, Pathankot Sh. Harpal Singh vide sealed envelope through ASI Naresh Kumar 1261/P. After relieving secret informer and while briefing fellow associates regarding intimation I SI along with fellow associates left for village Dolowal for installing brigades. After issuance of special report same be produced before Illaka Magistrate and Senior Officers and Control Room be informed through wireless. Sd/- Jagjeet Singh SI PS Taragarh dated 27/12/2023 today in the area of Village Pahado Chak at 08:15 PM."

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the quantity recovered i.e. 260 grams of heroin is marginally over and above the commercial quantity and the weight of the said contraband has been calculated along with the polythene which needs to be separated, therefore, it is a debatable issue qua the quantity of contraband, otherwise also, the petitioner has suffered incarceration for a period of 01 year, 01 month and 27

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in two other cases.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 01 month and 27 days for which the petitioner has suffered sufficient incarceration; the quantity of alleged contraband recovered is marginally over and above the commercial quantity in addition to the fact that investigation is complete, challan stands presented to Court on 22.06.2024, charges have been framed on 07.08.2024 and out of total 11 prosecution witnesses only 03 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 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 concession of bail.

5. DECISION:

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

27.02.2025

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No