



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

CRM-M-4360-2025

Date of Decision:08.04.2025

**HARWINDER SINGH ALIAS SWAMI
Vs.**

...Petitioner

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yashpal Thakur, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of Bharatiya Nagarik Suraksha Sanhita 2023 (B.N.S.S. 2023) for regular bail in FIR No.139 dated 01.11.2023 under Sections 21-C/29 (section 31 added later on) of NDPS Act 1985, registered at Police Station Basti Bawa Khel. District Jalandhar Punjab, Annexure P-1.

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

“To, SHO Police Station Basti Baba Khel Jalandhar, Jat hind today I St along with ASI Malkit Singh, 515, SR/C Pardeep Singh 730, constable Jasveer Singh 1893, senior constable Hardeep Kumar 1839. SR/CT Bajinder Singh 1312 were present at Baba Buddha Chowk in official PB08-DS-4498 driven by constable Himanshu Sehgal 2296 for the purpose of patrolling along with laptop and printer. Then one secret informed informed that Chandan Verma Chandu son of late Mangat Rai resident of house number 06. Uttam Singh Nagar, near chitta School Basti Sheikh Jalndhar at present confined in Kapurthala Jail that Sudesh Kumar @ Shekhu son of Kishen Lal is resident of house number



664 Mohalla new Rasila Nagar. Jalandhar and Harwinder Singh @Swami son of late Iqbal Singh resident of EQ-258 pakka Bagh Jalandhar, both of them came out from Jail on bail and both of them had made a gang and they used to bring intoxicant substance from Delhi and further sale in Jalndhar area. That today, also Sudesh Kumar @ Sheikhu son of Kisheri Lal resident of house number 664. Mohalla, new Rasila Nagar, Jalandhar and Harvinder Singh @ Swami son of late Iqbal r Singh, resident of house number EQ-258 pakka Bagh Jalandhar are coming with intoxicant substance to supply the same in the Jaindhara, that if Naka is installed then above mentioned Suresh Kumar Shekhu and Harvinder Singh @ Swami can be apprehended with heavy quantity of intoxicant substance. Then information is shared with other police official and we start checking suspected vehicle and persons is the meantime two person spotted coming on foot on the trunk of the Canal at Kapurthala Road and them is clean abapest person on seeing the police party ahead he take out sm black colour, plastic envelope and thrown the same in the nearby bushes of the road and thed to escape from the sput then i St on the basis of suspicion with the nete of se police officials apprehended them and asked their nathe and whereabouts then one person disclosed his name as Sudesh Kumar Shekhu son of Kishan Lal resident of house number 664, Mohalla, new Rasila Nogar, Jalandhar and another person disclosed his name as Harvinder Singh Swamy son of late Iqbal Singh resident of house number EQ-258 pakka Bagh Jalandhar, but on asking the reason of throwing plastic envelope both of them could not give satisfactory answer then again they were strictly questioned then both of them replied in voice that thrown plastic envelope is containing ICE which they have purchased from Dwarka at Delhi from one Negro person. That before conducting the search of the plastic envelope thrown by Sudesh Kumar @ Sheku efforts were made to join the passerby as independent witnesses in the police party but everyone show their inability on one or other excuse then I SI in the presence of the police official pick up the thrown black colour plastic bag by Sudesh Kumar@ Shekhu and on checking intoxicant, substance ICE was recovered and weighting it comes to 110 grams "ICE". Thereafter Substance ICE was kept in the separate plastic box and



bulk parcel was prepared. Then I SI sealed the bulk parcel containing the 110 grams ICE with my seal bearing prefix SS. Further sample of seal was prepared separately after use seal was handover to ASI Malkit Singh 515 then the bulk parcel containing 110 grams ICE duly sealed with seal bearing prefix SS was taken into police custody. That on my asking Sudesh Kumar Shekhu and Harvinder Singh Alli Swamy disclosed that on the saying of Chandan Verma @ Chandu, we procure it from Delhi and going to supply in Jalandhar. That Sudesh Kumar @ Shekhu and Harvinder Singh @ Swami, along with the Chandan Verma @ Chandu by keeping 110 grams ICE committed offence under section 21C/29/61/85 of Ndps act. That further ruqa is prepared to register the FIR and send through SR/CT Rajinder Singh 1312 to Police Station after the registration of the FIR. Number of the same to be informed, special reports be issued in illaqa magistrate and senior Police official be informed. I Si along with police officials are present on the spot for investigation, area Baba Budha Chowk Jalandhar at 06.45 PM SD/-Sukhraj Singh SI, CIA staff commission rate Jalandhar dated 01.11.2023.

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 contends that from the perusal of the instant FIR it is revealed that the petitioner has been apprehended by the police party on the basis of the secret information. He further contends that recovery of 110 grams of Methamphetamine was not recovered from the conscious possession of the petitioner, but from the co-accused namely Sudesh Kumar @ Sheikhu while it is the story of the prosecution that on seeing the police party, one accused took out black colour polythene envelope from right pocket of the pant worn by him and threw it on the ground and tried to fled away which is very hard to believe,



and, therefore, possibility of planting the recovery cannot be ruled out.

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 01 year, 05 months and 03 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved many other cases and recovery of 110 grams ICE Methamphetamine has been recovered from co-accused though could not controvert the fact that the same was effected from a polythene bag that was allegedly thrown by the co-accused namely Sudesh Kumar @ Sheikhu.

4. **Analysis**

Be that as it may, the story of the prosecution seems to be doubtful as regards recovery part is concerned because why would a person on seeing the police party would take out envelope from his pant and threw it on the ground and try to flee away. Apart from that the petitioner has already suffered sufficient incarceration i.e. 01 year, 05 months and 03 days 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 29.04.2024 charges stands framed on 30.07.2024 out of 11 prosecution witnesses, only one 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 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. **RELIEF**

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

08.04.2025

kv

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No