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2025:PHHC:040493



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12045-2025
DECIDED ON: 25.03.2025

MANGAL SINGH AND ANR

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yajur Sharma, Advocate
for the petitioners.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the second time under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking grant of Regular Bail to the Petitioners in case FIR No. 95 dated 02.07.2024 registered at Police Station: Dina Nagar, District: Amritsar Gurdaspur, Punjab for the offenses punishable under Sections 20(b) and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Annexure P-1).

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

“TO SHO dated 1.07.2023. 1 ASI including ASI Harjit Singh 442, CT Gagandeep 270, CT Gagandeep Singh 279 on our government vehicle No. PB 65 BG 9224 were patrolling in connection with the checking of miscreants and vehicles, and

when we reached Sugar Mill Paniar National Highway Naka, where HC Manpreet Singh 274 and PHG Surjan Singh 350, who had already posted for Naka in front of Sugar Mill Paniar, also joined the police party and started checking vehicles coming from the Pathankot side. While checking in, on July 2, 2024, at around 1:10 AM from the Pathankot side, a white Swift car with the number DL5 CJ2780 was seen coming. The person driving the car suddenly panicked upon seeing the police blockade, slowed down the car, stopped it, and started turning the car backward. I saw that there were four men inside the car, and they were apprehended. The driver of the car revealed his name as Sonu Singh, son of Narinder Singh, a resident of village Jagatpur police station in Chabal district, Taran Taran. The person sitting next to the driver of the car revealed his name as Mangal Singh, son of Satnam Singh. Persons sitting on the back seat disclosed their names as Balraj Singh, son of Massa Singh, and Jobanjit Singh, son of Jarnail Singh. I disclosed my name, identity, and rank to the apprehended accused and gave notice to the accused under Section 50 of the NDPS Act, stating that I suspect there is something objectionable in your car. Thus, you, along with the car in your possession, are to be searched. You have the legal right to have your search conducted by a Magistrate or a gazetted officer, to whom the apprehended persons said that we have full confidence that you can search our car. Further, consent memos were prepared, and Sonu Singh, Mangal Singh, Balraj Singh, and Jobanjit Singh signed the same. Before searching the said car, an attempt was made to join a public witness, but everyone stated their legitimate compulsion. Whereupon, the ASI, in the presence of fellow employees, conducted a search of the said white car Swift No. DL 5 CJ 2780 in front of them. Then, from the dashboard of the car, a black polythene was found containing charas and 100/100 Indian currency notes. Upon asking them about Indian currency notes, they disclosed that the same were obtained by selling charas to customers. The ASI weighed the recovered charas on the electronic weighing

scale, and the same came to be 408 grams, including the weight of the polythene. Then, the recovered 100/100 currency notes were counted, and the same, being 250 in number, the total recovered number came to Rs 25,000/-. Thus, the accused, by keeping in their possession 401 grams of charas and 25,000/- drug money, have prima facie committed an offense punishable under Section 20(b) and 27(A) of the NDPS Act 1985.”

3. **Contentions**

On behalf of the petitioners

Learned counsel for the petitioners contends that nothing has been recovered from the conscious possession of the petitioners as whatever recovery i.e. 401 grams of charas was effected that was from the dashboard of the alleged vehicle, which was being driven by co-accused Sonu Singh, who is the owner of the said vehicle. He further contends that the quantity of recovered contraband is non-commercial in nature.

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 petitioners are habitual offender as they are involved in multiple cases.

4. **Analysis**

Be that as it may, considering the custody period suffered by the petitioners i.e. 08 months and 21 days, 08 months and 22 days respectively; nothing has been recovered from the present petitioners as whatever recovery was effected that was from dashboard of the offending vehicle and also the fact that the quantity of recovered contraband is non-commercial in nature in addition to the fact that investigation is complete, challan stands

presented to Court on 30.11.2024, charges have been framed on 27.02.2025 and out of total 19 prosecution witnesses none has 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. RELIEF:

In view of the discussions made hereinabove, the petitioners are hereby directed to be released on regular bail on their 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.

25.03.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No