

2025:PHHC:015749



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232

CRM-M-4954-2025
DATE OF DECISION: 03.02.2025

SUSHANT KALSON

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Prateek Pandit, 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 439 Cr.P.C. for grant of Regular bail to the petitioner in FIR No. 104 dated 03.08.2023 U/s 15 (C), 29 of NDPS Act, 1985 P.S. Goraya District Jalandhar (Rural).

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

‘SHO P.S. Goraya, Jai Hind. Today I SI alongwith ASI Surinder Mohan 53 alongwith laptop, ASI Jinder Pal Singh 05, S/CT Gurjeet Singh 1193, ASI Satnam Singh 765 on government vehicle Bolero having No. PB-08-DS-0863 whose driver was PHG Shinder Pal 29725 were on patrolling and search of bad persons and were present near Radio Station, Gohavar. There secret informer gave information to me that Sushant Kalsan son of Suresh Kumar resident of Sheela Kheri P.S. Safidon, District Jind, Haryana and Akshay son of Satyawar resident of Sheela Kheri P.S. Safidon, District Jind Haryana and

Paramjit Singh @Pamma son of Inderjit Singh R/o Bhamian Kalan P.S. Jamalpur District Ludhiana do the business of selling poppy husk on large scale. Today also these three persons are coming from Jammu in Canter bearing No. HR-56-A- 6601 and have concealed heavy quantity of poppy husk amongst apple boxes and are coming this way and further going towards Ludhiana. If nakabandi is done on Highway road going towards Ludhiana near Chachrari, Jalandhar then these three persons can be apprehended alongwith heavy quantity of poppy husk. The information being reliable and credible fulfills the ingredients of offence U/s 15/61/85 of NDPS Act. Accordingly ruqa has been scribed and report under section 42 of NDPS Act has been separately prepared in sealed cover. Report U/s 42 NDPS Act to be sent to senior officers and original ruka. are being sent through SCT Gurjeet Singh 1193 to police station. Number of the case be informed after registering the same. Special reports be issued and sent to senior officers and Ilaqa Magistrate. I SI alongwith fellow officials shall proceed to do nakabandi on Highway Road, village Chachrari. Sd/- Jagdish Raj SI P.S. Goraya dated 03.08.2023.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the alleged recovery of 300 kg poppy husk was recovered from the canter bearing registration No. HR-56-A-6601 and the petitioner is neither the owner nor the driver of the said truck and was just accompanying the other co-accused persons and was not aware that the offending canter is carrying the said contraband, therefore, prays for grant of regular bail to the petitioner. It is further submitted on behalf of the petitioner that he was picked up from his house and a false recovery has been planted upon him. Moreover, the co-accused namely Paramjit Singh @ Pamma has already been granted the concession of regular bail by this Court vide order dated 13.01.2025 (Annexure P-5) passed in CRM-M-65264-2024.

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 1 year, 5 months and 27 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner along with his co-accused were found in possession of the contraband of 300 kg of poppy husk which is commercial in nature. Learned State counsel could not controvert the fact that the co-accused namely Paramjit Singh @ Pamma has already been granted the concession of regular bail by this Court vide order dated 13.01.2025 (Annexure P-5) passed in CRM-M-65264-2024.

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. 1 year, 5 months and 27 days, added with the fact that the co-accused namely Paramjit Singh @ Pamma has already been granted the concession of regular bail by this Court vide order dated 13.01.2025 (Annexure P-5) passed in CRM-M-65264-2024 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 24.01.2024 charges stands framed on 07.02.2024 out of 20 prosecution witnesses, three PWs have given up and rest are yet to be examined 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.

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

03.02.2025

sham

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