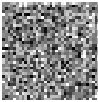


2025.PHHC.032189



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6078-2025 (O&M)
DECIDED ON: 06.03.2025

MANOJ KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rhythem Bajaj, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-4309-2025

Application is allowed, as prayed for.

CRM-M-6078-2025

1. Relief Sought

This petition has been filed under Section 482 of BNSS, 2023 for grant of regular bail in FIR No. 212 dated 07.12.2023 (Annexure P-1) registered under Sections 22C, 27 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. City Malout, District Shri Muktsar Sahib.

2. Facts

Facts as narrated in the FIR reads as under:-

“Station Incharge. Police Station City Malaur. Fateh. Today I ASI was present at CIA Staff-2, Malout then one writing from SI

Kulwinder Singh No. 431/SMS was receiving through Constable Khushbalwinder Singh No. 504/SMS, CIA Staff-2, Malout, the contents of same are that Today I SI along with Constable Rajwinder Singh No. 1232/SMS and PHG Guravtar Singh No. 23584 in a government Vehicle Balero No. PB-65-BF-2053 having Invertor, Printer fitted inside being driven by Constable Khushbalwinder Singh No. 504/SMS along with Laptop were going towards Dana Mandi from Bathinda Chowk for patrolling and for searching suspicious persons and when Police Party started entering Dana Mandi then in front of a Closed Shop on left hand side, one old aged clean shaven person sitting, having black coloured plastic polythene in his hand, started eating something after taking out from the said polythene and after seeing the police party trying to slipped due to fear. Then I SI on the basis of suspicious got stopped the vehicle and with the help of co-officials apprehended him and asked his name and address who described himself as Manoj Kumar son of Kulwant Rai resident of Ward No. 5, Gali No. 7, Near Tower, Sarabha Nagar, Malout. In the plastic polythene carried by the apprehended person in his right hand, whose mouth was open, tablet strips are seeing, which looks intoxicating. I SI being a Local Rank is not having the right to investigate as per the law established for the narcotics substances, so I SI along with co-officials, stopped the above said Manoj Kumar who carry a black coloured plastic polythene in his right hand whose mouth was open and which is having tablet strips. For which some regular NGO be sent on the spot. After taking print out of the written information same is being sent to CIA Staff-2, Malout through Constable Khushbalwinder Singh No. 504/SMS in the government vehicle Balero No. PB-65-BF-2053. Upon receiving the written information, a Rapat No. 17 daed 07.12.2023 was entered by SI Jagsir Singh No. 512/Moga, Incharge CIA Staff-2, Malout in the Daily Diary and I SI along with SI Didar Singh No. 08/SMS in the above said government vehicle whose driver is Constable

Khushbalwinder Singh No. 504/SMS, departed towards the spot for the action. I SI along with co-officials reached at the spot, where SI Kulwinder Singh No. 431/SMS along with co-officials and apprehended old aged person carrying one black coloured plastic Polythene, whose mouth was open containing tablet strips was found present. SI Kulwinder Singh No. 431/SMS narrated the facts to me SI and I SI informed my name, rank and posting to the apprehended person and asked his name and address, who described himself as Manoj Kumar son of Kulwant Rai resident of Ward No. 5, Gali No. 7, Near Tower, Sarabha Nagar, Malout. I SI told him that in the black coloured plastic polythene carrying by you, whose mouth is open and from which tablet strips are seen clearly, which seems to be nashili. But as per the law made for narcotic substances you have the right that you can get search yourself and the black coloured plastic polythene carrying by you in your right hand whose mouth is open from any Gazetted Officer or Magistrate or you can brought before them in this condition. Upon which above said Manoj Kumar told that I do not want to conduct the search of myself and black coloured plastic polythene carried by me in my right hand from any Magistrate or any Gazetted Officer. I have a faith upon you. So you can search me and black coloured plastic polythene carried by me in my right hand in presence of your employees. Upon which I SI tried to join the public witness into party but failed to do so. Upon which I SI prepared a Notice under Section 50 NDPS Act to the above said Manoj Kumar upon which he appended his signatures in Punjabi and witnesses witnessed the same. Then I SI checked the black coloured plastic polythene carried by above said Manoj Kumar in his right hand whose mouth was open. Then 10 strips containing 10/10 narcotic tablets in each strip total 100 narcotic tablets mark Etizolam Tabletss 0.5 mg having B. No. MO-5922, MFG. MAR 2023, EXP. FEB 2025 were recovered and the said recovered narcotic tablets were put into same black coloured plastic polythene and packet was prepared. Then I SI

conducted personal search of the above said Manoj Kumar as per law but no objectionable article was recovered from him. The recovered packet containing narcotic tablets was stamped by me SI with my seal GS and prepared a sample seal separately. After use stamp was handover to SI Didar Singh No. 08/SMS. The above said packet containing recovered narcotic tablets along with sample seal was taken into police custody vide separate recovery memo. Witnesses appended their signatures being witness on the memos. Above said Manoj Kumar by keeping 100 narcotic tablets in his possession committed an offence under Section 22 (C) / 61/85 of NDPS Act. Thus a Ruka was written on Laptop and after taking its print out, same was sent to Police Station City Malout through PHG Guravtar Singh No. 23584 for registration of case against above said accused Manoj Kumar for the above said offence. After registering the case number be informed. Special reports should be issued. Incharge Control Room, Sri Muktsar Sahib be informed through wireless message. I along with co-officials is busy in investigation on the spot. Sd/- Gurmit Singh ASI, CIA Staff-2, Malout. Date 07.12.2023. Today in the area of Dana Mandi, Malout at 07:20 PM. Today in Police Station: Upon receiving the above said Ruka in the police station above said case under above mentioned offence against above said accused person has been registered on CCTNS Project and the copy of FIR along with original Ruka is being sent to ASI on the spot through same PHG. Special Reports are sent to the Illaga Magistrate and higher officials through HC Jagwinder Singh No. 1076/SMS. PCR/SMS is informed through W/M.”

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 further submits that the petitioner is in custody since 1 year, 2 months and 23 days, wherein investigation is complete, challan stands presented on 07.06.2024 and nothing is to be recovered

from the petitioner. He contends that the antecedents of the petitioner are clean, as he is not involved in any other case.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that recovery of contraband i.e., 100 intoxicant tablets is commercial in nature, therefore, petitioner does not deserve the concession of bail.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 1 years, 2 months and 23 days and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 07.06.2024, charges have been framed on 04.07.2024 and out of total 19 prosecution witnesses, only one has been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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.

5. **RELIEF:**

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

Pending application(s), if any shall dispose off, accordingly.

06.03.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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