



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5790-2025
DECIDED ON: 27.02.2025

KAVI RAJ

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Neha Rana, Advocate for
Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 B.N.S.S. of 2023 for grant of bail to the petitioner in case FIR No. 148 dated 30.05.2024 under section 15 (c) of NDPS Act, 1985 Police Station Julana, District Jind.

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

"To SHO, Police Station Julana, District Jind, Jai Hind, Today on 30.05.2024, myself ASI along with EHC Vijay Kumar No. 973 / Hisar along with Constable Vinod Kumar 3171/GGM along with vehicle No. HR-03 GV-5858 along with Driver ASI Anoop Singh No. 895/Hisar were present for patrolling to detect crime at village Budakheda, District Jind, near HP Petrol Pump, Rohtak-Jind road alongwith laptop

printer. When a special informer met and informed to myself ASI that Kaviraj son of Preet Singh and Jitendra Singh son of Mahendra Singh, residents of village Ikkas, District Jind are involved in selling poppy husk after bringing from Madhya Pradesh in their TATA truck closed body No. HR 61C-5477. Today they will go to Julana in their above mentioned truck via National Highway 152 D. There are sufficient quantity of poppy husk in their truck. If you set up a barricade here itself, then both the above mentioned persons can be apprehended along with their truck and poppy husk. The information is credible and the report under section 42 NDPS Act was sent to Police Station Julana for information to the higher authorities through EHC Vijay Kumar No. 973/Hisar. Myself ASI informed the fellow employees about the information and started barricading at this spot with the help of the above-mentioned government vehicle. At about 11.15 AM a closed body truck was seen coming from Rohtak side. Myself ASI with the help of fellow employees got the closed body TATA truck No. HR 61C-5477 stopped and got it parked in the side and two persons were found in the truck. Myself ASI asked the name and address of the truck driver, he told his name as Jitendra Singh son of Mahendra Singh resident of Ikkas, Police Station Sadar Jind, District Jind and the person sitting on the conductor's seat told his name as Kaviraj son of Preet Singh resident of Ikkas, Police Station Sadar Jind, District Jind. I asked the driver as to what is there in the truck, he told that there are 5 cabins of JCB. Upon suspecting some narcotic poppy husk with above said Kaviraj and Jitendra Singh and truck HR61C-5477 myself ASI first of all gave Notice under section 50 NDPS Act to above said Kaviraj that myself ASI Ramphal No. 493/SRS STF Unit Hisar have some doubt about some narcotics poppy husk upon you Kaviraj son of Preet Singh resident of village Ikkas, District Jind and your TATA truck closed body No. HR 61C-5477. The search of you and your above said truck has to be taken and you have legal right to get yourself and your truck searched from some Gazetted Officer or Duty Magistrate by calling them at the

spot or you can be produced before them along with the truck for search. Give your written reply. Upon this, Kaviraj and witnessed put their signature on the notice and above said Kaviraj got his reply written after reading the notice that I, Kaviraj son of Preet Singh resident of village Ikkas district Jind have read the notice given by you. I want to get myself and my TATA truck closed body No. HR 61C-5477 get the search in front of a gazetted officer by calling at the spot. Myself and my above said truck may be got searched from some gazetted officer be calling him at the spot. Kaviraj and witnesses put their signature on the reply of the notice. Thereafter I gave Notice under section 50 NDPS Act to the above Jitender Singh that I, ASI Ramphal No. 493/SRS STF Unit Hisar, you, Jitender Singh, son of Mahendra Singh, resident of village Ikkas, district Jind, have a suspicion that there is some narcotic substance like poppy husk with you and your TATA truck closed body No. HR 61C-5477 of which you are the driver, and you and your above said truck have to be searched. You have a legal right to get the search of you and your above said truck from some gazetted officer or duty magistrate by calling them at the spot or you alongwith your truck can be produced in front of them for search. Give your written reply to the notice. Jitender Singh and witnesses put their signature on the notice above said Jitender read the notice given by me and got his reply written that I, Jitender Singh, son of Mahendra Singh, resident of village Ikkas, district Jind, have read the notice given by you. I want to get myself and my TATA truck closed body No. HR 61C-5477 of which I am the Driver searched in front of some gazetted officer by calling them at the spot. Search of myself and my above said truck be carried out by calling some gazetted officer at the spot. Jitendra Singh and witnesses put their signature on the reply to the notice. In the meantime, EHC Vijay Kumar No. 973/Hisar produced before me the DDR No. 14 dated 30.05.2024 police station Julana after getting the report registered. Myself ASI requested to Sh. Rajdeep Bhatia, ETO Jind, who has been appointed by the Honorable District

Deputy Commissioner, Jind regarding searching under the NDPS Act on his mobile number 9416767000 from my personal mobile number 9468422607 for reaching at the spot. At about 12:34 PM, after waiting, Sh. Rajdeep Bhatia, ETO, reached at the spot at about 1:30 PM and by introduced himself and asked about the whole situation from myself ASI. After perusal of the notice and reply of the notice attested the notice and reply of the notice and search of myself ASI was taken by the above said gazetted officer and after leaving no article and cash, directed to take the search of the apprehended person Kaviraj above said and Jitendra Singh above said and TATA truck with closed body No. HR-61C-5477. Myself ASI as per the rule take out the search of Truck Driver Jitender Singh and conductor Kavi Raj above said in front of the Gazetted Officer. No narcotics material were recovered from the search of Jitendra Singh above said and Kaviraj abovesaid. The above said truck of closed body was got opened and checked and found 5 JCB cabin in the truck and 12 white bags with tied mouth were found in the truck which were opened and checked and poppy husk was recovered from all the bag and the bags of recovered poppy husk was weigh from the charging computer scale one by one and 12 kilograms poppy husk was there in each bag and the total weigh of all the 12 bags alongwith the recovered poppy husk was 144 kilograms. Driver Jitendra Singh took out the RC from the dashboard of the above said truck and produced. The 12 bags of recovered poppy husk were packed separately and was sealed with seal RP/3 of myself ASI and the gazetted officer Sh. Rajdeep Bhatia, ETO Jind put his seal RK/1 on the packet of 12 bags of poppy husk and sample seal was prepared. The packets of 12 bags of recovered poppy husk along with sample seal with seal RP/3 and RK/1 and truck TATA closed body No. HR-61C-5477, the original RC of the above said truck and a mobile marka Redmi of black colour having SIM No. 9671619495 and mobile Samsung keypad having SIM No. 9034932451 recovered from accused Kaviraj by preparing the packets and myself put my seal RP/3 and

Gazetted Officer put his seal RK on the packet and 12 packets of bag of poppy husk and one packed of mobile having seal of RP/3 and RK/1 alongwith sample seal alongwith RC HR-61C-5477 alongwith tata truck closed body No. HR-61C-5477 were taken into police custody vide recovery memo for evidence. Accused Kaviraj and Jitender Singh above said put their signatures on the recovery memo. The recovered 12 packets bag of poppy husk and recovery memo were attested by above said Gazetted Officer Sh. Rajdeep Bhatia. Myself ASI after using the seal and keeping the sample of the seal handed over to Constable Vinod Kumar 3171/GGM STF Hisar and the Gazetted Officer Sh. Rajdeep Bhatia above said keep his seal after use with him. Peoples of public were asked to join in the above said proceedings but all of them went away by showing their legitimate reasons. The above said accused Kaviraj and Jitender Singh have committed the offence under section 15(c)/61/85 of the NDPS Act from the recovered 144 kilograms poppy husk in 12 bags including the weight of the bags in truck No. HR-61C-5477 and written information is being sent to Police Station Julana through EHC Vijay Kumar No. 973/Hisar. The case No. be informed after registration of the case and special report of the case may be sent to the Ilaka Magistrate and higher officials and other Investigating Officer be sent at the spot for further investigation. Myself ASI along with fellow employees alongwith case property alongwith acsused are present at the spot. Now: Area village Budhakhera near HP Petrol Pump, Rohtak-Jind Road.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as no recovery has been effected from the conscious possession of the petitioner and the present case was registered on the basis of secret information. She further contends that

no sample was drawn at the time of alleged recovery. It has been contended on behalf of the petitioner that his co-accused Jitender Singh has already been granted the concession of regular bail by this Court vide order dated 21.02.2025 passed in CRM-M-9312-2025, copy of which has been produced in Court by learned counsel for the petitioner and the same is taken on record as document A.

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 another case, wherein he is not on bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 21 days for which the petitioner has suffered incarceration; co-accused Jitender Singh has already been granted the concession of regular bail by this Court vide order dated 21.02.2025 passed in CRM-M-9312-2025; nothing has been recovered from the conscious possession of the petitioner in addition to the fact that investigation is complete, challan stands presented to Court on 12.11.2024, charges have been framed on 05.02.2025 and out of total 17 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. **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.

27.02.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No