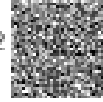


2025.PHHC.016832



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

**CRM-M-5667-2025
DECIDED ON: 05.02.2025**

MOHD. ASHRAF**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Kamlesh, Advocate for the petitioner.
Mr. Rubal Pawar, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 0067 dated 30.05.2024 under Sections 22, 29 of NDPS Act, 1985, registered at Police Station City-1, Malerkotla, District Malerkotla, Punjab.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of ruqa: -To SHO Police Station City-1, Malerkotla, "Jai Hind" Today I ASI alongwith SC Satnam Singh 1115/SANG, SC Surinder Singh 1775/SANG, L/C Beyant Kaur 1312/ SANG were present in the Police Station, time would be around 4:30 PM. Then Navpreet Singh drug inspector, Malerkotia came, He informed to I ASI, Mohd. Ashraf S/o Mohd. Sharif R/o Tibbian Wala Mohalla, Jamalpura, Malerkotla , Police Station City-1, Malerkota who has medical store at Jarg road, Malerkotla. Who is habitual of selling intoxicant tablets by keeping it at his home? At this I, ASI alongwith fellow officials and drug inspector Navpreet Singh along with laptop printer, in Government. vehicle bearing no. PB-65BA-7390 of being driven by PHG Gurmeet Singh 26800 at time 5.00 PM, reached at the gate

of the house of Mohd. Ashraf S/o Mohd. Sharif R/o Tibbian Wala Mohalla, Jamalpura, Malerkotla, Police Station City-1, Malerkotla, where Mohit Kumar S/o Subhash Chand R/o Idgah Road Mohalla, Malerkotla was found and he was joined with the police party. Raid was conducted at Mohd. Ashraf's house, then Mohd. Ashraf run away from the side gate. Then Navpreet Singh drug inspector Malerkotla searched the iron cupboard kept in a room in the house of Mohd. Ashraf S/o Mohd. Sharif R/o Tibbian Wala Mohalla, Jamalpura, Malerkotla, Police Station City-1, Malerkotla from which 3 yellow coloured cardboard boxes were found out of which two boxes contained 60 cards each and third box contained 11 cards, each box had the word Alprazolam Tablets IP (50mg), Calmpik-0.5 written on it in, on which the batch number has been erased with black ink Exp. 03/2027 MRP Rs 31.00 is written. In the presence of the witnesses, three yellow colour boxes containing 131 strips (10/10 intoxicant tablets in each strip) Marka Alprazolam tablets IP (50 mg) calmpik-0.5 alongwith cardboard were recovered and a parcel was prepared by putting them in a cloth bag. Then I, ASI stamped the parcel 131 strips (in each strip) Marka Alprazolam Tablets IP 50 mg) calmpik-0.5 total 1310 tablets with his own stamp bearing word GS. Sample stamps prepared separately, after using the stamp handed over to SC Satnam Singh 1115/SANG. Then I, ASI through seizure memo taken into police possession stamped parcel 131 strips (10/10 intoxicant tablets in each strip) Marka Alprazolam Tablets IP (50 mg) Calmpik -0.5 total 1310 tablets alongwith sample Stamps. Memo is being witnessed and signed. Above named Mohd. Ashraf committed the offence U/s 22/61/85 of NDPS by keeping 131 strips (10/10 intoxicant tablets in each strip) Marka Alprazolam tablets IP 50mg Calmpik -0.5 total 1310 tablets. Then I, ASI has sent the rug for registering the case under Section 22/61/85 of NDPS Act against above named Mohd Ashraf after typing in the laptop and thereafter taking the printout and sent the same to Police Station City-1, Malerkotla by hand through SC Surinder Singh 1775/Sang. After case registration casenumber, be informed. Through E Mail Control Room Malerkotla be informed. I ASI along with fellow officials busy in investigating on the spot. Jurisdiction Tibbian Wala Mohalla, Malerkotla AT 7:30 PM, Sd/-Gulzar Singh ASI Police Station City-1, Malerkotla, Dated 30.05.2024. ”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and recovery of 131 strips of

Alprazolam tablets IP (50 mg) Calmpik-0-5 (10 tablets in each strip and in total 1310 tablets) were not effected from the conscious possession of the petitioner. She further submits that the cash of Rs.2,31,000/- was recovered from the counter box of the shop of the petitioner.

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 the quantity of contraband involved in the present case is commercial in nature.

4. **Analysis**

Considering the submissions made by learned counsel for the petitioner that the cash of Rs.2,31,000/- was recovered from the counter box of the shop of the petitioner, which is yet to be established as drug money in the trial by way of evidence and the petitioner has suffered incarceration of 6 months and 3 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 14.10.2024, charges are yet to be framed and total 15 prosecution witnesses are to be examined, meaning thereby conclusion of trial shall take long 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

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 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.

(SANDEEP MOUDGIL)
JUDGE

05.02.2025

Meenu

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