



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-5988-2025

DATE OF DECISION: 14.02.2025

GURJANT SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vivek K. Thakur, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

This petition has been filed under Section 483 of the BNSS, 2023 seeking the concession of regular bail for the petitioner in FIR No.84 dated 18.07.2023 under Sections 21-A of The Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 21(B), (C), 29, 61 and 85 added later on) registered at Police Station Fatehgarh Sahib, District Fategarh Sahib.

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

‘Copy of Memo, "SHO Sahib, PS Fatehgarh Sahib Jai Hind, Today I SI Satwinder Singh No:86/FGS along with ASI Baljit Singh 68/FGS, SI Kiranveer Singh 29/TE and Constable Ajay Kumar 26/FGS including laptop printer on a government



vehicle bearing registration No.PB-65-BC-1525 whose driver was CC Swaran Singh 370/FGS were present at Madrasi Colony Sirhind Mandi in connection with the search for the suspect and the suspect. It will be at around 07:00 PM a secret informer came to SI Satwinder Singh No.86/FGS and informed that Anuj Bata son of Lakhvir Chand resident of village Dangeria Police Station Badali Ala Singh Presently resident of Mata Gujri Colony near Saji Kariana Store back side Gurudwara Jyoti Sarup Sahib, who is indulged in the business of selling Chitta (Heroin), who at this time is walking around the slums at Defenseban Sirhind Mandi making and selling Chitta (Heroin) Bitta, who is fair in colour and of medium height wearing a white weed T-shirt. He is also having a blue and black colour backpack and if a raid is conducted now at Defenseban Sirhind Mandi, he can be apprehended red-handed with Heroin. Finding the information confirmed and reliable, SI Satwinder Singh No:86/FGS sent the report No.42 under the NDPS Act to the service of senior officers. Thereafter, SI Satwinder Singh No:86/FGS along with fellow employees reached Defenseban Sirhind Mandi and searched for Anuj Batta, then a clean-shaven person was seen walking on foot from Chungi No.04 side road towards the slum. On seeing the vehicle of the police party coming from the front, he immediately turned back in panic, who is having black and blue colour backpack. When he got suspicious, S Satwinder Singh No:86/FGS stopped him by raising his voice and he stopped the vehicle with the help of fellow employees and asked him for his name and address. On asking, he disclosed his name as Anuj Bata son of Lakhvir Chand, resident of village Dangeria Police Station, Badali Ala Singh District, Fatehgarh Sahib presently resident of Mata Gujri Colony, near Saji Grocery Store, back side Gurudwara Jyoti Sarup Sahib. To whom SI Satwinder Singh No:86/FGS informed his name, position and posting and said that I suspect there is a drug substance in your backpack black blue colour. Your backpack is to be searched. But you have a legal right that you



can get your backpack searched before a gazetted officer or a magistrate, to whom you can be taken and presented with your backpack or they can be called at the spot. Thereafter, he understanding the said fact and aware of his authority, replied that I do not want to call any gazetted officer or magistrate sir. I trust you. Only you can search my backpack. On which SI Satwinder Singh No:86/FGS prepared a notice of the said Anuj Batta under Section 50 of the NDPS Act (Consent Memo) and Anuj Batta aforesaid signed the same in English language and ASI Baljit Singh 68/FGS and CC Swaran Singh 370/FGS also signed the said memo, which was verified by SI Satwinder Singh No:86/FGS. Thereafter, SI Satwinder Singh No:86/FGS informed Anuj Batta that you can search me and the police party and the police vehicle before getting your backpack searched. Who said, "You are a police officer, I trust you, but I do not want to search you and the police party and the police vehicle, you can search my backpack". On which the consent statement of Anuj Batta aforesaid was recorded, which was signed by him in English language and ASI Baljit Singh 68/FGS and CC Swaran Singh 370/FGS also append their signatures on the same. Thereafter, SI Satwinder Singh No:86/FGS tried to include a witness at the spot from the passer-by as an independent witness, but all of them kept on leaving, citing some compulsion of their own. Thereafter, SI Satwinder Singh No:86/FGS took down the back bag, which was in possession of Anuj Batta and checked the same. Out of which a brown colour material from a transparent polythene bag and jewellery weighing scale and a roll of silver paper and 20 empty transparent polythene bags were recovered. On which SI Satwinder Singh No: 86/FGS opened the polythene bag containing a brown coloured material and checked the same according to experience by tasting it and identified the same as Heroin. The latter was weighed with a small electronic weighing scale, which was found to be 50 grams of Heroin including the weight of polythene bag. The recovered Heroin was put up in a separate plastic box and the



same was further put up in a cloth bag and the backpack colour black blue with golden jewellery weighing scale and one-roll silver paper and 20 empty transparent polythene bags were put up in a separate cloth bag and separate parcel was prepared. Thereafter, SI Satwinder Singh No:86/FGS stamped both the Parcels with his stamp bearing seal impression 'SS' and prepared sample seal separately. The seal after use was handed over to ASI Baljit Singh 68/FGS. Thereafter, SI Satwinder Singh No:86/FGS has taken into police custody both the parcels bearing seal impression 'SS' as well as the sample seal vide recovery memo. The recovery memo was prepared. On which aforesaid Anuj Batta signed his signature in English language and ASI Baljit Singh 68/FGS and CC Swaran Singh 370/FGS got their respective signatures on the same. The aforesaid Anuj Batta committed the offence under Section 21-A/61/85 of the NDPS Act by keeping 50 grams of Heroin in his possession and SI Satwinder Singh No:86/FGS got typed a Ruqa for registering the case against the accused Anuj Batta for the said offence and sent the same by hand through Constable Kiranveer Singh 629/FGS to Police Station Fatehgarh Sahib, the case number shall be obtained after registering the case. Officials shall be informed through wireless notification. I SI along with other officers are investigating the spot. Ba-hind- Division Sirhind Mandi at 8:30pm SD/ SI Satwinder Singh CIA Sirhind dated 18.07.2023 9780002298 on receiving the above said case under said offences has been registered against Anuj Batta s/o Lakvir Chand resident of Vill. Dhangeria PS Badaliala Singh District Fatehgarh Sahib presently residing at Mata Gujri Colony near Saji Kiryana Store backside Guruduwara Jyoti Swaroop sahib and the verification was completed. A copy of FIR is being sent in the service of Officers and Illaqa Magistrate by post. Incharge Control Room Fatehgarh Sahib is being informed through email. CT Karamveer Singh 629 is being sent to SI Satwinder Singh 86/FGS with the case file.'



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 submits that as per the allegations, the police party raided the house of the petitioner and the alleged recovery of 350 grams Heroin was effected from the black bag pack of the petitioner. He further submits that no further recovery is to be effected from the petitioner and he has been in custody since last 1 year and 6 months and after lapse of more than one year after framing of charges on 12.07.2024, out of total 27 witnesses none has yet examined which is sufficient to infer that the trial is moving glacially and the conclusion of the trial is likely to take long time, therefore, prays for grant of regular bail to the petitioner.

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, 6 months and 21 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating 410 grams of Heroin was effected from petitioner's bag pack, moreso, the petitioner is a habitual offender as he is involved in one more FIR as is evident from the custody certificate that but is not in a position to controvert the submissions made by learned counsel for the petitioner.



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, 6 months and 21 days, more so, after lapsing of one year from the date of framing of charges i.e. 12.07.2024, out of total 27 witnesses none has been examined so far which is sufficient to infer that the trial is moving at snail's pace and the conclusion of trial is likely to take considerable time and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, 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.

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 the concession of bail.

5. Relief

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

14.02.2025
anuradha

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