

2025.PHHG:016828



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

**CRM-M-5638-2025
DECIDED ON: 05.02.2025**

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

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Rubal Pawar, AAG Punjab

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

The jurisdiction of this Court under Section 439 Cr.P.C. (483 of BNSS 2023) has been invoked for grant of regular bail to the petitioner in case FIR No. 147, dated 27.07.2024, under Sections 15-C, 25, 27 and 29 of NDPS Act, 1985, registered at Police Station Bhikhi District Mansa.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of ruga, SHO, Police Station Bhikhi, Jai Hind. Today, I, ASI along with C-2 Gurpreet Singh 1039/Mansa, SC Malwinderjit Singh 220/Mansa, SC Baljinder Singh 1465/Mansa, C Kuldeep Singh 905/Mansa along with electronic kit and investigation kit departure for checking of suspected persons and suspected vehicles on vehicle Rapid No.PB-31-P-3524 driven by SC Baljinder Singh 1465/Mansa and were going Kishangarh Farwahi, Fafare Bhai Ke, Borawal and when police party reached near drain at link road Fafare Bhai Ke to Borawal road then on left side of drain towards Fafare Bhai Ke one Alto Car bearing No.HR-20-N-1231 parked adjoining to Thada (fixed sitting area under Pipal Tree and black net was fixed on back side mirrors and three young persons were sitting with their below faces in it

and who were tried to escape suddenly after seeing the vehicle of police party then I, ASI stopped the vehicle and got apprehended three persons sitting in Car with the help of colleagues on the basis of suspicion and asked their name and address turn by turn then the person sitting on driver seat told his name as Kuldeep Singh Son of Gurmail Singh Son of Gurdev Singh, resident of Kahangarh and the person sitting on conductor seat told his name Visakha Singh Son of Krishan Singh Son of Kasari Ram, resident of Mehma and the person sitting at back seat told his name as Rachna Singh Son of Gurdev Singh Son of Chhota Singh, resident of Daula Singh, Police Station Dharamgarh and to whom told that there is suspicion about intoxicant substance in your Car and due to this reason, want to check you and Car in your possession but you have legal right that you can check yourself and your Car from any Magistrate Sahib of Gazetted Officer and then they told that we want to check ourself and our Car from any Gazetted Officer. Thereafter, I, ASI contacted from M.No.9780007046 to PPS Gurpreet Singh DSP (SD) Mansa on his M.No.96211-00001 at 5:54 PM and after disclosing the facts requested to come on the spot for further proceedings and to whom, I, ASI disclosed about correct location/place and C Kuldeep Singh 905/Mansa sent to village Borawal for obtaining Computer Kanda and after some time PPS Gurpreet Singh DSP (SD) Mansa by travelling government vehicle along with gunman reached on the spot at 6:30 PM and who was got aware about facts and C Kuldeep Singh 905/Mansa after obtaining Computer Kanda come on spot. Thereafter, PPS Gurpreet Singh, DSP stated to Kuldeep Singh, Visakha Singh and Rachna Singh turn by turn that I am Gazetted Officer of Punjab Government and posted as DSP (SD) Mansa. You have legal right that you can check yourself and your Car from any Magistrate Sahib or from any Gazetted Officer except me. Kuldeep Singh, Visakha Singh, Rachna Singh told turn by turn to PPS Gurpreet Singh, DSP Sahib that we have full faith upon you. You can check ourselves and our Car on the spot and we do not want to create any strict evidence against us. Upon this, information memo, legal right memo and consent memo has been prepared separately and upon which, Kuldeep Singh, Visakha Singh, Rachna Singh put their signatures and witnesses put their testimony. Upon this, PPS Gurpreet Singh, DSP Sahib along with me/ASI checked the Car of Kuldeep Singh, Visakha Singh and Rachna Singh. Three plastic bags of white colour were recovered laying at back seat behind driver seat. Mouth of three bags were opened turn by turn and checked then Poppy Husk was recovered from three bags. Weight of recovered Poppy Husk along with bags were checked with Computer Kanda then weight of first bag along with weight of bag becomes 17 Kilo 990 gram and the same was marked as A, weight of second bag along with weight of bag becomes 17 Kilo 995 gram and marked as B and weight of third bag along with weight of plastic bag becomes 17 Kilo 975 gram and marked C. Total weight of bags of recovered Poppy Husk becomes 53 Kg 960 gram. No other article was recovered upon checking of Car and no document pertaining to ownership of Car was recovered. Three bundles of recovered Poppy Husk was marked by me/ASI along with his stamp NS. Sample stamp was prepared separately. After use it handed over to SC Baljinder Singh 1465/Mansa. Three bundles were duly stamped by Sh. Gurpreet Singh DSP (SD), Mansa with his stamp GSB and attested the sample stamp by affixing his stamp and keep his stamp in his possession. Three bundles of recovered Poppy Husk, Sample Stamp and Alto Car No.HR-20-N-1231 were taken into police possession vide

recovery memo. Witnesses put their testimony on memo and attested by DSP (SD), Mansa. Personal search of accused was carried out in the presence of Sh. Gurpreet Singh, DSP and whatever was recovered during personal search, the same was taken into police possession vide recovery memo. Kuldeep Singh, Visakha Singh and Rachna Singh committed the offence under Section 15 (c)/61/85 of NDPS Act by keeping 53 Kg 960 gram Poppy Husk in their possession. Upon this, ruqa against Kuldeep Singh, Visakha Singh and Rachna Singh under the above said Section sent to Police Station for registration of case through SC Malwinderjit Singh 220/Mansa. Case number be intimated after registration of case. PCR Mansa informed through W/M separately. Special reports be issued. I, ASI along with colleagues present on the spot for investigation. Sd/- Nachhattar Singh ASI, Police Station Bhikhi dated 27.07.2024 link road Fafare Bhai Ke to Borawal near Drain Bridge at 8:45 PM. Upon receiving ruqa in Police Station, the above said case number under the above said Section against Kuldeep Singh Son of Gurmail Singh, resident of Kahangarh, Visakha Singh Son of Krishan Singh, resident of Mehma and Rachna Singh 2006 son of Gurdev Singh, resident of Daula, Police Station Dharamgarh was registered and record has been completed. Original ruqa along with case file sent back through SC Malwinderjit Singh 220/Mansa before ASI Nachhattar Singh 398/Mansa on the spot. Copy of FIRs as special reports and necessary post prepared and then forwarded through SCT Gursewak Singh 1501/Mansa before Hon'ble Illaqa Magistrate Sahib and Higher Officers. PCR Mansa informed separately.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner is in custody since 30.07.2024 and the recovery of contraband i.e., 53.960 kgs of poppy husk is little above than the non-commercial quantity. He further submits that the weight of the contraband was done alongwith the weight of the three bags and in case the weight of the bags will be reduced from the total weight, then the quantity fall under the category of non-commercial.

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 huge quantity of contraband was recovered from the petitioner, therefore, he does not deserve the concession of bail at least at this stage.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 6 months and 5 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 05.12.2024 and charges are yet to be framed and total 21 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 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 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.

05.02.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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