

STATE PUNJ-1207-25

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

227

CRM-M-6035-2025

Date of Decision : **March 19, 2025**

VISHAVJEET SINGH ALAIS MAST ALIAS VISHU

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. G.S.Saini, Advocate
for the petitioner.
Mr. J.S.Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. Relief Sought

This petition has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, with a prayer for the grant of regular bail to the petitioner in FIR No. 0057, dated 14.04.2024, under Sections 21, 23, 29 Of Narcotic Drugs & Psychotropic Substances Act 1985, (Section 21-C, 25, 27-A of the NDPS Act & Section 25 of Arms Act 1959 Added later on), Police Station Sadar Ferozepur, District Ferozepur.

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

‘To SHO, P.S. Sadar, Jai Hind. Today, I Inspector Incharge, CIA Staff, Ferozepur alongwith SI Sukhdev Singh 265/Tarn Taran, ASI Gurmeet Singh 94/FZR, ASI Lakhbir Singh 132/FZR, HC Simranjit Singh 669/FZR, SC Gurwinder

Singh 271/FZR, SC Satnam Singh 385/FZR, SC Gurjant Singh 276/FZR, C Karanbir Singh 1239/Tarn Taran, LC Amanjot 191/FZR, PHG Gurwinder Singh 4647/FZR, PHG Baljit Singh 22662 on Government vehicle Scorpio having colour white and bearing registration no. MH-15-TC-844, which was being driven by C Sukhjant Singh 279/FZR. One Government vehicle motorcycle Bajaj Pulsar having registration no. PB-65-BE-7426 and along with laptop printer, were going for the purpose of checking of antisocial elements and suspicious vehicles; in the area of P.S. City Ferozepur, P.S. Sadar Ferozepur and P.S. Kulgarhi, when police party were reached near Nizamdeen Chowk, then oneseecret informer who knew Gurmeet Singh, stopped our car and gave information to me and ASI Gurmeet Singh 94/FZR that Manjit Singh @ Mani Son of Balwant Singh, resident of Kamalewala, P.S. Sadar Ferozepur, Rohit Sethi Son of Raman Sethi, resident of House no.406, Gali Sethi Inderjit Singh, Mohalla Dharampura, Ferozepur City and Bhavnesk Kumar @ Ashish Son of Hira Lal Chopra, resident of Kucha Kadar Baksh Gali, Delhi Gate, Ferozepur, now resident of Canada are involved in smuggling Heroin from Pakistan smuggler and supply the same. Manjit Singh @ Mani and Rohit Sethi has taken a house in Baba Deep Singh Avenue Ferozepur and reside there. Their abovesaid companion Bhavensh Chopra @ Ashish, after contacting with Pakistani smuggler got the Heroin supplied to them and today also consignment of Heroin has been received by them and they are in the search of the same, if raid is being got conduct, then Heroin in heavy quantity can be recovered. The information is reliable and accordingly its information memo prepared. The offence under Section 21, 23, 29, 61, 85 of NDPS Act is made out against above said Manjit Singh @ Mani, Rohit

Sethi and Bhavnesh Chopra. Therefore, ruqa is being sent through C Gurjant Singh 276/FZR on Government vehicle motorcycle model Bajaj Pulsar having registration no. PB-65-BE- 7426, for registration of FIR and after the registration of the FIR, number of the same should be intimated. Special report be issued to the Illaqa Magistrate and Officer. PCR should be informed. After knowing about the physique, the information be given. Sh. Balkar Singh, PPS DSP was requested to reach at the spot. I proceed towards Baba Deep Singh Colony alongwith other employee. Sd/ Prabhjit Singh, Inspector Incharge, CIA Staff, Ferozepur. Dated: 14.04.2024.'

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 as he was not even named in the present FIR. He submits that as per the allegations, the petitioner had been collecting money as has been disclosed by co-accused Rohit Sethi but the said allegations are not sufficient to connect the petitioner with the commission of crime. He would further submits that the recovery of 7 kg Heroin, Rs.36 lacs drug money, one rifle 315 bore with 5 live cartridges etc. has been effected from Manjit Singh @ Mani and Rohit Sethi, who have been arrested from the spot, moreso, nothing is to be recovered from the petitioner, therefore, prays for grant of anticipatory bail to the petitioner. He also submits that co-accused, namely, Khushal @ Shally has been granted the concession of bail by this Court vide order dated 22.1.2025 passed in CRM-M-3371-2025.

On behalf of the State

Learned State Counsel appearing on advance notice on instructions from Investigating Officer vehemently opposes the prayer for grant of concession of anticipatory bail stating that the petitioner is a habitual offender as he is involved in two more cases under the NDPS Act and in one case under the Prison Act.

4. Analysis

Be that as it may, considering the custody period i.e. 7 months and 24 days for which the petitioner has suffered incarceration; co-accused namely Khushal @ Shally has already been granted the concession of regular bail by this Court vide order dated 22.1.2025 passed in CRM-M-3371-2025, challan stands presented to Court on 11.10.2024, charges are yet to be framed, and out of 27 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.

And, as far as the pendency of other cases against the petitioner and his involvement in other cases is concerned, reliance can be placed upon the judgment 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. RELIEF:

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

March 19, 2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No