



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7492-2025
DECIDED ON: 04.03.2025

JOBANJIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Monty Goyal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No. 25 dated 05.02.2024 (P-1), Under Section 22/61/85 of N.D.P.S. Act, 1985 registered at Police Station Sadar Khanna, Police Distt. Khanna, Distt Ludhiana, Punjab.

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

“Station House Officer Police station Sadar Khanna, Jai Hind, today myself Inspector along with ASI Baljinder Kumar No. 755/Khanna, Constable Varinder Singh No. 283/Khanna, Constable Davinder Singh No. 645/Khanna on government vehicle Scorpio No. PB-10DB-3693 Whose driver ASI Gurmeet Singh number 729/Khanna;

by carrying along a laptop and printer in relation to patrolling for making a check over suspicious persons on mobile blockade and were present on service road before Hardik Machine Tools Factory at non-populated area of village Allodh. Time would be around 01:40 PM, when a haircut man wearing a black cap was seen walking towards Khanna on Gobindgarh side, holding a black plastic envelope in his right hand. On approaching and passing through the Khanna side on the blockade, myself Inspector, on the basis of suspicion, stopped him with the help of his colleagues and asked for his name. He revealed his name Jobanjit Singh s/o labh Singh r/o Village khakh PS Goindwal, District Tarn Taran. To whom myself Inspector identified himself in uniform and told that 'I am inspector Hardeep Singh, Station House Officer of police station Sadar Khanna. My co-officials and I are in our uniform, my name plate is attached to my uniform, but I suspect that there is some narcotic substance in the black plastic envelope held in your right hand. Therefore, you and the black plastic envelope held in your hand has to be searched but you have the legal right under Section 50 NDPS Act that you and the black plastic envelope held in your right hand can be searched by a gazetted police officer. Or if you want to search it in the presence of a Magistrate, then he can be called on spot or the envelope can be taken to him along with you?' He said 'I want to search the black plastic envelope in my right hand by some Gazetted police officer, who should be called on spot. Then myself Inspector prepared the non-consent memo of accused Jobanjit Singh. The above said accused signed his signature in English on memo of non-consent and the witnesses testified the same. Then around 2:40 PM, myself Inspector contacted from my mobile phone no. 99882-74382 to Shri Sukh amrit Singh

Randhawa P.P.S, DSP (D) Khanna on their whatsapp no. 98142-26404 and informed him about the situation and requested him to come. At around 03 PM, he came on the government vehicle no. PB-65 AP-2190 along with his team, he were informed about the situation. Then DSP identified himself to the apprehended Jobanjit Singh and told that 'I am Sukh Amrit Singh Randhawa PPS DSP (D) Khanna. I suspect that there is some narcotic substance in the weighty black plastic envelop that you are holding in your right hand. That's why you and the black plastic envelop held in your right hand has to be searched. But according to the law, you have full right that if you wanted to get search the abovesaid black plastic bag held in your right hand in the presence of any other gazetted officer or any Magistrate, then they may be called on spot or the envelope can be taken to one along with you.' On which the accused Jobanjit Singh said that 'DSP sir, I am sure you can search me and the black envelop held in my right hand. On which DSP prepared a memo of consent of the abovesaid accused Jobanjit Singh. On which the accused signed his signature in English. However, myself Inspector and ASI Baljinder Kumar No. 755/Khanna and Constable Harwinder Singh No. 283/Khanna signed their signature as witnesses. I myself Inspector tried to include private witnesses on the spot but everyone expressed their own compulsion. Then according to the instructions of DSP (D) and in the presence of the above said witnesses, I myself Inspector conducted a search and opened the weighty envelop in the right hand the above said accused Jobanjit Singh, in the search of envelop the narcotic pills labelled Lomofil strips were found. On the counting of which total 100 strips each contains 60 pills total 6000 pills found. Those who have batch number is 03L23004 and MFG 02/2023

to EXP. 01/2026. By putting them in the same black envelop and putting them in a clothed bag. Myself Inspector stamped it with his stamp letter HS and prepared the sample stamp. After the usage of stamps it was handed over to ASI Baljinder Kumar No. 755/Khanna. Then the recovered package of narcotic pills, DSP affixed one of his stamp SS and attested the package and sample stamped also attested. DSP kept his stamp after use. Then the recovered package of narcotic substance total 100 strips Lomotil sealed HS+SS and taken into custody through memo of recovery and sample stamps were prepared separately. On the memo the accused signed his signatures and witnesses testified their testimony. DSP attested the memo of recovery. Accused Jobanjit Singh has committed the offences punishable under Section 22 NDPS Act by keeping 100 strips of narcotic pills labelled Lomotil in his possession. Therefore, I am sending Constable Davinder Singh No. 645/Khanna in the police station to register the case FIR against the above said accused Jobanjit Singh. After the registration the case FIR, its number be obtained from the case file. DCR Khanna and Senior Officers should be informed. Special reports to be issued. Myself Inspector along with co-officials are indulged in investigating at the spot of occurrence. Within the boundary of Hardik Machine Tools Factory at non-populace area village Allodh at 05:00 PM Sd/- Hardeep Singh INSP Station House Officer P.S Sadar Khanna Dated 05.02.2024. On the receipt of above ruqa at P.S. the above case against the above mentioned offences is registered, after the registration, the original ruqa and copy of the FIR is being sent to the above Investigating Officer by hand through incoming CT to the spot. Special reports are being sent to the service of Area Magistrate and Senior

Officers by hand through S/CT Mandeep Singh No, 256/Khanna. DSP Khanna is being informed.”

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 a false recovery of 6000 intoxicant tablets of lomitol has been planted upon him. He further contends that the petitioner is a man of clean antecedents as he is not involved in any other case.

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 quantity of recovered contraband i.e. 6000 intoxicant tablets of lomitol is commercial in nature, which has been recovered from the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year and 21 days for which the petitioner has suffered incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 07.05.2024, charges have been framed on 17.05.2024 and out of total 10 prosecution witnesses one witness has been examined and one witness has been given up 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.

5. **DECISION:**

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.

04.03.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No