

2025:PHHC:023701



237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8091-2025
DECIDED ON: 18.02.2025

BALDEV SINGH @ VICKY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ishmeet Singh, Advocate
for the petitioner.

Mr. J.S. 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.89, dated 22.08.2023, under Section 22 of NDPS Act, registered at Police Station Mallanwala, District Ferozepur.

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

Chief Officer Sahib Police Station Mallawala, Jai Hind, Today, I, ASI along with ASI Major Singh 828/Firojpur, ASI Gurdev Singh 621/Firojpur, PHG Kishan Kant 6148, PHG Pargat Singh 6226 were riding in government vehicle PB-05-05R-9108 which PHG Pargat Singh was driving, in relation to patrolling and checking of suspected people. The party was going to village Kohala, Bharana, Khosa Dal Singh, Chuchak Wind etc. when the police party was going from

village Khosa Dal Singh to village Chuchak Wind, a man on the unpaved road on behalf of village Marur on his motorcycle number PB29 AB 6306 Made of Bajaj CT100 was coming. On seeing the police party's vehicle, the man turned his motorcycle back, took out a wax envelope from his pocket and threw it on the ground with his left hand. I, ASI with the help of fellow employees controlled him and asked for his name and address. Who gave his name as Baldev Singh alias Vicky son of Nek Singh resident of Khosa Dal Singh. To whom I, ASI introduced myself and told that I am Darsan Singh posted at ASI at Police Station Mallawala. It is suspected that there is any narcotic substance in the wax transparent envelope thrown by you. The wax transparent envelope thrown by you and you are to be searched, but you have the legal right to have the wax transparent envelope thrown by you and your search can get done in front of an Area Magistrate or a Gazetted Police Officer. Which can only be called at the spot of the incident. Who said that the waxy transparent envelope thrown by me contained intoxicating pills. You yourself can search for the wax envelope dropped by me and for me. On which to express agreement, Memo was prepared separately. On which accused Baldev Singh alias Vicky signed and the witness gave his own testimony. I, ASI tried to make a party including public witness before checking the wax transparent envelope dropped by accused Baldev Singh alias Vicky but everyone expressed their own compulsion and no one was ready. Then accused Baldev Singh alias Vicky was asked to pick up the waxy transparent envelope dropped by him and open it. From which Intoxicating pills made of Etizolam Tablets 0.50 MG, Etirelax 0.5 company INMAC Laborats Bangsipura 142033 (PB) - 55 packets, 10 tablet from each packet, a sum of Total 550 tablets color light pale Pink batch number deleted of all packets. All packets are of one brand. The said intoxicating pill which was recovered was put in the same wax envelope and put in a cloth packet and sealed with DS Stamp and a separate sample of stamp was also taken on a paper. After use stamp was handed over to ASI Major Singh 828/Firojpur. Then the ASI took the said intoxicating pills into the custody of the

police through separate recovery memo. On the memo, witnessed gave their testimony. Then the ASI conducted a body search of accused Baldev Singh alias Vicky as per the rules, but no valuable thing was recovered from him. Body Search memo was prepared. On which witnesses put their respective signatures. Accused Baldev Singh alias Vicky has committed the offense under section 22/61/85 NDPS ACT by keeping Narcotic Pills in his possession. Against which, for registering a case by writing rukka in the present case, PHG Kishan Kant 6148 is being sent to Police Station Mallawala. The case should be registered and informed about the case number. The special reports should be issued, notification should be given to Control Room Ferozepur through W/M. I am looking forward to the investigation alongwith fellow employees including ASI. Today on the boundary of Khosa Dal Singh AT-09:05PM Sd/-Darshan Singh ASI Police Station Mallanwala Date 22.08.2023 Today Police Station: - The said Rukka after sent to Police Station and the case of the said crime against the said Baldev Singh alias Vicky was registered on CCTNS. A special report is being prepared separately and sent to the service of the District Magistrate Sahib and Seniors Officers through CT Maninder Singh 878/Firo. PCR/EZR is being informed through wireless.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the contraband i.e. 550 tablets of Etizolam 0.5 mg (Etirelax 0.5) has been shown to be recovered from the conscious possession of the present petitioner. There is also violation of Section 42 of NDPS Act, 1985. Moreover, the recovery memo was not signed by the petitioner, which creates a serious doubt in the prosecution story qua the alleged recovery. The assertion is that as per the prosecution story the petitioner on seeing the police party have thrown the ploythene bag containing the alleged

contraband, thus, it cannot be said that the recovery has been affected from the conscious possession of the petitioner.

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 alleged contraband i.e. 550 tablets of Etizolam, falls under the commercial quantity.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 1 year, 5 months and 25 days as of now added with the fact that after framing of charges on 16.03.2024, out of total 14 prosecution witnesses only 02 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period. Moreover, the petitioner is having clean antecedents.

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 his 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

18.02.2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No