

2025.PHHC.023594



236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8075-2025
DECIDED ON: 18.02.2025

MEENU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashok Giri, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 272, dated 09.10.2024, under Sections 21 and 27-A of NDPS Act, 1985 (Section 29 of NDPS Act, added later on), registered at Police Station Phillaur, District Jalandhar (Rural).

2. Facts

The facts as narrated in the FIR reads as under:-

Respected Sir, SHO P.S Phillaur Jai Hind. Today on 09.10.2024, I ASI alongwith ASI Jasvir Singh no.644/Jalandhar, C.Jaspal Singh no.895/Jalandhar, L/C Ravinder Kaur no.824/Jalandhar were on government vehicle bearing registration number PB-08-AG-4891 being driven by C.Jaspal Singh no.895/Jalandhar and were going from main road Nurmahal to Ganna Pind through unpaved road in

connection with search of smugglers and patrolling. A lady was seen coming from front side. On seeing vehicle of police party, she tried to turn back. I ASI came down from vehicle and apprehended abovesaid lady with the help of lady official. Meanwhile abovesaid lady threw plastic transparent polythene carried by her in hand. I ASI took that lady to the spot and asked her whereabouts after informing my name to her as ASI Sukhdev Singh posted as Chowki Incharge Lassara. On asking, she disclosed her identity as Meenu w/o Sumit Kumar @ Shambu s/o Balbir Chand r/o Ganna Pind, P.S Phillaur, District Jalandhar. I ASI asked about thing kept inside polythene but she could not reply satisfactorily. I ASI examined polythene with the help of torch and found Indian currency notes and another item in one more transparent polythene. I ASI got picked up abovesaid thrown polythene and checked it. On checking, Heroin was recovered from another polythene and Indian currency notes Rs.500x3=1500/-, 200x1=200/-, 100x2=200/-, 50x1=50/-, 10x5=50/- total Rs.2000/-, was recovered from transparent plastic polythene. I ASI conducted weight of recovered Heroin on digital scale which came to be 10 grams. Recovered Heroin 10 grams alongwith plastic polythene put in cloth bag and parcel was prepared by me ASI. Recovered Indian currency notes Rs.2000/- alongwith plastic polythene was put in cloth bag separately and parcel was prepared. I ASI affixed my seal bearing impression SS on both the parcels. Sample seal was prepared on separate paper. After use, seal was handed over to ASI Jasvir Singh no.644/Jalandhar. I ASI took parcel of recovered Heroin and Indian currency notes, in police possession through recovery memo. Abovesaid Meenu w/o Sumit Kumar has prima facie committed an offence u/s 21/27A/61/85 NDPS Act by keeping Heroin 10 grams and Rs.2000/- drug money in her possession. Ruga is being sent to police station through Email ID shophillaur@gmail.com for registration of FIR against her. FIR number be informed after its registration. Senior Officials and Control room be informed through phone. Special report be prepared. I ASI alongwith other officials, am busy with investigation at the spot. Videography of abovesaid was conducted in

*compliance of section 105 BNSS. Sd/- Sukhdev Singh ASI ICPP
Lassara P.S Phillaur District Jalandhar dated 09.10.2024 at Ganna
Pind 08:40PM.”*

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the investigating agency has violated the provisions of NDPS Act, as during the course of alleged recovery no independent witness was associated. He further submits that 10 grams of Heroin along-with drug money of Rs.2000/- has been shown to be recovered from the possession of the petitioner. The quantity recovered from the petitioner is non-commercial in nature.

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 on the ground that the contraband along-with drug money was recovered from the possession of the petitioner and there is every likelihood that she will flee away and thereby, it may hamper the trial.

4. Analysis

Considering the fact that the quantity recovered from the petitioner is non-commercial in nature added with the fact that the petitioner is first time offender, as is evident from the custody certificate and also the fact that challan stands presented on 16.12.2024 wherein, the prosecution has cited 15 witnesses, meaning thereby, conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the 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 subject to her 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

sham

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