

2025:PHHC:036849



234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8308-2025 (O&M)
DECIDED ON: 18.03.2025

PARDEEP KUMAR @ MANGA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This is the second petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 148, dated 19.08.2023, under Sections 21 and 22 of NDPS Act, 1985 (Section 29 of NDPS Act, added later on), registered at Police Station Garhshankar, District Hoshiarpur.

2. Facts

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

Officer In-Charge Police Station, Jai Hind, today I ASI alongwith, ASI Lakhvir Singh 929/HPR, ASI Balvir Singh 520/HPR and PHG Amrik Singh 26696 were patrolling on government vehicle in connection with search of bad and suspicious persons and OPS Seal-III and were having a laptop, printer, pendrive and investigation kii with us and when police party was present at the inter state nakabandi Kokowal Majari, two young boys were seen coming on a

black colour Active scooter PB- 24-C-9568 from Himachal Pradesh side who after watching the police party stopped and tried to turn back and run away but both of them were nabbed by me ASI and other officials on the basis of suspicion to inquire about their names and addresses. The person who was driving the Activa scooter disclosed his name as Balwinder Kumar alias Binda son of Surinder Pal, resident of Nagdipur, P.S. Mahilpur, District Hosiarpur, whereas the person who was pillion rider disclosed his name as Pardeep Kumar Manga son of Kulwinder Chand, resident of Nagdipur, P.S. Mahilpur, District Hosiarpur, to whom I ASI apprised about my name, designation and posting etc. and told them that I have suspicion of some intoxicating substance in their possession due to which their personal search and search of their Activa scooter is to be conducted, but they have got a legal right to get their search conducted in presence of a magistrate or a gazetted officer and if they so require then necessary arrangements can be made at the spot. On which both of them replied that they have full faith in me and I can conduct their search. On this, consent memo of Balwinder Kumar alias Binda and Pardeep Kumar alias Manga were prepared separately which were signed by them and by the witnesses. Before conducting search of Balwinder Kumar alias Binda efforts were made to join witness from public, but everyone from public expressed helplessness for the same. Hence, I ASI in the presence of other members of the police party, conducted personal search of Balwinder Kumar alias Binda as per procedure and a heavy polythene bag was recovered from the right pocket of his trouser, which was opened and checked and heroin was recovered from the same, the weight of which was conducted with a digital weighing machine and same was 100 grams. Thereafter, personal search of Pardeep Kumar alias Manga was conducted as per procedure and from the polythene bag which he was carrying in his right hand, 26 injections of Buprenorphine IP 2ML were recovered. Thereafter, parcels of recovered heroin and injections were made which were duly sealed with my stamp 'KS' on them and taken into police possession through separate recovery memo. The sample

stamp 'KS' was prepared separately and the stamp was handed over to ASI Balvir Singh 520/HSR after use. Above mentioned Balwinder Kumar alias Binda and Pardeep Kumar alias Manga have committed offences punishable under sections 21, 22-61-85 of NDPS Act by keeping 100 grams Heroin and 26 injection of Buprenorphine IP 2 ML in their possession respectively. A ruga has been written and is being sent to Police Station by hand PHG Amrik Singh No. 26686 for registration of a case. FIR be registered and its number be informed. Special reports be issued. Intimation be given control room. I ASI and other officials are making investigation at the spot. Sd/- Kulwinder Singh ASI."

3. Contentions:

On behalf of the petitioner

It has been contended by learned counsel for the petitioner that as per the case projected by the prosecution recovery effected from the petitioner is of 26 injections/ampules of Buprenorphine 2 ml. each, which makes it 52 ml, which falls under non-commercial quantity. The quantity recovered has been wrongly assessed by the lower Court as a commercial quantity and to hold that the rigors of Section 37 of the NDPS Act will be attracted. He further submits that in fact conversion of ml into grams is dependent upon density, thus, in the absence of prosecution spelling out the details from the label of the injection, it cannot be ascertained as to whether the quantity is commercial. Apart therefrom counsel relies upon judgment rendered by Kerala High Court tilted as ***Salam vs. Union of India 2007(16) RCR (Criminal) 909***, whereas relying upon the affidavit filed by Union of India itself, it was held as under:-

"2. A detailed counter affidavit has been filed on behalf of the first respondent and in paragraph 5 thereof it is stated as follows:

It is specifically submitted that "Buprenorphine" injection or "Buprenorphine" Hydrochloride injection is a sterile solution of Buprenorphine Hydrochloride in water for injection and the standards for the same are given in the Indian Pharmacopoeia, 1996. As per

Indian Pharmacopoeia, 1996 small quantity and commercial quantity of Buprenorphine is fixed as follows:

It is respectfully submitted that as per the Indian Pharmacopoeia standards one gram of Buprenorphine is 3333.33 millilitres when it is in liquid form for the purpose of small quantity. For the purpose of commercial quantity 20 grams of Buprenorphine is 66666.60 millilitres when it is in liquid form.

<i>Small Quantity of Buprenorphine</i>		<i>Commercial Quantity of Buprenorphine</i>	
<i>As per Notification S.O.527(E) dated 16.17.1996 of M/O. Finance, D/O. revenue</i>	<i>Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards</i>	<i>As per Notification S.O.527(E) dated 16.7.1996 of M/O finance, D/O.Revenue</i>	<i>Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards</i>

3. Even though Sri. M.V.Mathai Muthirenthi, learned counsel for the petitioner addressed me at length with reference to the averments in the writ petition and the grounds raised therein and the learned counsel drew my attention to the apparent conflict between the judgment of the Supreme Court and that of the Division Bench of this Court in view of the stand taken by the first respondent through the counter affidavit before this Court and the submissions of the learned Assistant Solicitor General Sri. Parameswaran Nair at the bar, it is not necessary that the issue is discussed and gone into by this Court elaborately. It is not in dispute that it is necessary that small quantity and commercial quantity of buprenorphine tidegisic is fixed in milliliters considering the liquid form of the substance. The Government have relied on Indian Pharmacopoeia 1996 and taken the stand that 1 gram of buprenorphine corresponds to 3333.33 milliliters and 20 grams corresponds to 66666.60 milliliters.

Ultimately Mr.Mathai Muthirenthi also submitted that it will suffice, if the above stand of the first respondent taken on the basis of Indian Pharmacopoeia 1996 be given the fiat of the court. Under the above circumstances, the writ petition will stand disposed of declaring that 1 gram of buprenorphine is equivalent to 3333.33 milli liters when it is a liquid form for the purpose of small quantity and declaring further that for the purpose of commercial quantity of 20 grams of buprenorphine is equivalent to 66666.60. ”

In light of the aforesaid, counsel for the petitioner submits that the quantity recovered from the petitioner cannot be treated as commercial and thus rigors of Section 37 of the Act will not be attracted.

4. 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 petitioner is a habitual offender as he is involved in other cases of similar nature. However, he is not in a position to dispute the aforesaid factual assertions.

5. Analysis

Considering the fact that the quantity recovered from the petitioner is non-commercial in nature added with the fact that the investigation already stands concluded and the trial has advanced, out of 10 witnesses, 01 stands examined, 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order 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 lend the petitioner in a situation of denial the concession of bail.

5. **DECISION:**

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

18.03.2025

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*