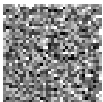


231

2025.PHHG:023502



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-7997-2025  
DECIDED ON: 18.02.2025

KASHMIRO

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Arora, 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 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.24 dated 25.04.2024, registered under Sections 21(b)/27-A of NDPS Act, 1985 at Police Station Tibber, District Gurdaspur.

2. Facts

Facts as narrated in the FIR reads as under:-

*“Today I, ASI along with ASI Palwinder Singh 451/G, ASI Tarsem Singh 312/ G, L/CT Harmanpreet kaur 751/ G, PHG Rajbir Singh 24841 on our private vehicle for the duty of patrolling and search of bad elements and we were going from Police Station to village Tibber Bahian, Talwandi Virk and when the police party reached at village Tibber on the turning point of*

*Talwandi Virk near Jathere Rathora then front side a lady was seen coming walking foot and on seeing the police party, the said lady in a perplex condition tried to turn back side and she tried to throw the black color plastic bag on the side which she was holding in her right hand and on that moment, the said lady was intercepted with the help of L/CT Harmanpreet kaur 751/ G and thereafter I, ASI apprised my name, rank and place of posting to her and asked about her name and upon which she disclosed her name as Kashmiro wife of Sucha Mash, resident of Bahian Colony and before conducting the search of black color plastic bag which she was holding in her right hand, we tried to associate the public as witness who join the police party but everybody while showing their compulsion did not join the police party and thereafter I, ASI with the help of fellow officials checked the aforesaid plastic black color envelope which was held by Kashmiro in her right hand and on searching some narcotic substance i.e. heroin (white) was recovered and it was weighed on the electronic scale and on weighing the same, 5 grm heroin (white) along with the weight of envelope. Thereafter I, ASI told abovesaid Kashmiro that I have some suspicion that you have some narcotic substance and you have legal right that you can get yourself searched before Magistrate or Gazette Officer whom I can call at the spot, she told me that whatever narcotic substance with her you have already recovered the same and she had got no other narcotic substance with her. She reposed faith in me that you can conduct search of her and thereafter as per my instructions L/CT Harmanpreet Kaur 751/ G while keeping the honor and dignity had conducted the search of said kashmiro in the building in Jathere Rathora however, no contraband was recovered from her however, under shirt worn by her an amount of Rs. 10,000/- was recovered from her and she disclosed that this was drug money. The recovered 5 grm heroin along with envelope was put in a plastic bag and envelope was made with my seal M.P and aforesaid recovered money of Rs. 10,000 as a drug money in*

*Indian Currency was taken under separate memo under police possession. The sample seal was prepared the aforesaid seal after use was handed over to ASI Palwinder Singh 451/ G. That said Kashmiro wife of Sucha Mash resident of Bahian Colony while keeping 5 gram heroin along with envelope and Rs. 10,000 as a drug money has committed offence U/s 21(B)/ 27 (A)/ 61/ 85 NDPS Act and for getting case registered, the roka is being sent through PHG Rajvir Singh 24841 to the police station. After registration of the case number may kindly be informed. Special reports may kindly be issued in the service of higher officer. Control Room be informed through wireless. I, ASI along with fellow officials are busy in investigation. Sd/- Mahinder Pal, ASI, P.S. Tibber dated 25.04.2024”*

**3. Contentions:**

**On behalf of the petitioner**

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that the petitioner is in custody since 25.04.2024 wherein the quantity of contraband effected is 5 grams of heroin, which is non-commercial in nature, therefore, prays for grant of regular bail on this ground alone.

**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 stating that the petitioner was found to be carrying 5 grams of heroin in a plastic envelope, therefore, he does not deserve the concession of bail.

**4. Analysis**

Considering the custody period undergone by the petitioner i.e., 9 months and 22 days and is not involved in any other case, as is evident from the perusal of the custody certificate; investigation is complete, wherein

conclusion of trial shall take considerable time as out of 9 prosecution witnesses, only two have been examined after framing of charges on 30.09.2024 so far, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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 on 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

Meenu

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |