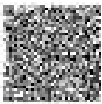


2025.PHHC.032118



230

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8398-2025
DECIDED ON: 06.03.2025

SHAHID RASHID BHAT

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh Sekhon, Advocate and
Mr. Kaushal Chahal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. (482 of BNSS, 2023) for grant of regular bail in FIR No. 22 dated 20.03.2024 registered under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Shambu, District Patiala.

2. Facts

Facts as narrated in the FIR reads as under:-

“To the SHO PS Shambu, Jai Hind, Sir today I SI along with ASI Krishan Chand 552/PTL, ASI Jaswant Singh 682/PTL, SC Ramandeep Singh 1601/PTL, PHG Pawan Kumar 18325 in govt. vehicle bearing registration no. PB-11CU-2612 being driven by ASI Sukhdev Singh 392 having laptop, printer and investigating kit along were present at main Ambala-Rajpura Road in the revenue

limits of village Alimajra in relation to barricading. Meanwhile it would be time around 4:00 AM, a secret informer came present and informed to I SI that one car make Alto of white colour bearing registration no. JK-15B-6095 which will go towards Jammu Kashmir side from Ambala side and which is being driven by Shaukat Ahmed Guru son of Gulab Ahmed resident of village Naid Khai, PS Sambhal, District Baramulla (J&K) and one Shahid Rashid Bhutt son of Abdul Rashid Bhutt resident of village Naid Khai, PS Sambhal, District Baramulla (J&K) is sitting on the conductor seat. The said persons in car make Alto of white colour bearing registration no. JK-15B-6095 are coming towards Shambu side from Ghanaur side via going through village and there is huge quantity of intoxicant capsules and liquid intoxicant substance in said car make Alto of white colour bearing registration no. JK-15B-6095. The said persons are indulged in the smuggling of intoxicant capsules and liquid intoxicant substance. They have formed a nexus for smuggling on intoxicant material. Today also the said persons are coming in car make Alto of white colour bearing registration no. JK-15B-6095 by taking heavy quantity of intoxicant capsules and liquid intoxicant substance in it. If barricading be conducted immediately then said Shaukat Ahmed Guru, Shahid Rashid Bhutt can be apprehended along with intoxicant capsules and liquid intoxicant substance. On which the secret informer was discharged thankfully. As the information being credible and reliable, on which the act of said Shaukat Ahmed Guru and Rashid Bhutt fulfills the ingredients of commission of offence under section 22/61/85 NDPS Act. Therefore I am sending the ruga to PS by hand SC Ramandeep Singh 1601/PTL for the registration of case against said persons. Kindly inform the FIR number after registering the case. Fellow policemen leaving am I SI along with for barricading. In the revenue limits of: conducting Main GT Road, in the revenue limits of village Ali Majra, time 4:30 AM. SD/ Bhadur Ram SI PS Shambhu dated 20.03.2024.'

3. Contentions:**On behalf of the petitioner**

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the alleged recovery of 69 strips containing 8 capsules totaling 552 capsules of Smasmo Proxyvon Plus and 1 ltr. Of 750 ml intoxicant liquor have already been effected and has been falsely planted upon the petitioner and no further recovery is to be made from the petitioner. He has further argued that the antecedents of the petitioner are clean, meaning thereby, he is not a habitual offender. The attention of this Court has been drawn to an order dated 04.02.2025 (Annexure P-6) passed in CRM-M-5160-2025 vide which similarly situated co-accused namely Shaukat Ahmad @ Showkat Ahmad Gooru has already been granted the concession of bail.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 11 months and 12 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected falls within the category of commercial quantity, therefore, prays for dismissal of the petition.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 11 months and 12 day and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents and similarly situated co-accused has already been granted the concession of bail vide order dated 04.02.2025 (Annexure P-6) added with the fact that investigation is complete, challan stands presented on 18.09.2024,

charges have been framed on 27.11.2024 and out of total 11 prosecution witnesses, only one has been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, 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. **Relief:**

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

06.03.2025

Meenu

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