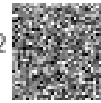


2025:PHHC:025582



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8796-2025
DECIDED ON: 21.02.2025

LAKHWINDER SINGH ALIAS HIRA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 10, dated 04.02.2024, under Sections 15, 29 of NDPS Act, 1985, registered at Police Station Julkan, District Patiala.

2. Facts

Facts as narrated in the FIR reads as under:-

"At this time one ruqa written by ASI Sukhdev Singh 170/Ptl. was received in the police station by hand through CT Surinder Puri 1864/Ptl for registration of case under section 15/61/85 NDPS Act against Lakhwinder Singh Hira son of Kashmir Singh, resident of Dera village Khatouli, Police Station Julkan, Sarabjit Singh @ Chhabi son of Mahinder Singh, resident of village Rampur Pipria, Tehsil Bahadurpur Mangoli, Ashok Nagar,

Madhya Pradesh. The contents of the same are as under:- To the SHO, Police Station Julkan, Fateh! Today, I, ASI along with ASI Nishan Singh 1231/ Ptl, SC Gurpartap Singh 86 / Ptl. Ct. Surinder Puri 1864/Ptl. PHG Pawan Kumar 30269, PHG Agnrez Singh 18156 and PHG Bhajan Singh 29958 with laptop, printer were riding Govt. vehicle bearing registration No.PB-11-CF-3825 being driven by PHG Gurnam Singh 30224 and were present at Nadi Banna, village Dudhan Gujran in connection with patrolling and in search of suspicious persons and were checking the vehicle passing through. At about 04.00 PM, one car make S-Cross, colour grey was seen coming from the side of village Dudhan Gujran. I, ASI made signal to the occupants of the car to stop the car. On seeing the police party in front, the driver of car tried to turn back the car and speed away then the car stopped. I, ASI along with companions apprehended the car along with occupants. On boot of the car were weighed which came to be 26 kgs. each, total 52 kgs. of poppy husk. Both the plastic bags were marked serial No.1 and 2 and converted into parcel. I, ASI sealed both the plastic bags with my seal bearing letters SS. Sample seal was prepared separately. After use, seal was handed over to ASI Nishan Singh 1231/ptl. Both the parcels of plastic bags along with sample seal was taken into police possession through separate recovery memo. Witnesses signed the memo. Above mentioned Sarabjit Singh @ Chabbi and Lakhwinder Singh @ Hira have committed offence under section 15/61/85 ND&PS Act by keeping 52 kgs. of poppy husk in their possession. Therefore, the statement for registration of case under said section against above mentioned Sarabjit Singh @ Chabbi and Lakhwinder Singh @ Hira is being sent to the police station by hand through Ct. Surinder Puri 1864/Ptl. After registration of case I may be intimated case number. Senior officers and control room, Patiala be informed. Special reports be issued. I, ASI along with companions am busy in investigation at the spot. Sd/- Sukhdev Singh, ”

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

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case as the land of petitioner Lakhwinder Singh and MHC Sukhdev Singh of PP Rohar Jagir is situated in village Khatauli near to each other and there remains dispute between the petitioner family and police official MHC Sukhdev Singh with regard to common path. He further submits that no recovery of whatsoever has been effected from the conscious possession of the petitioner.

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 recovery of contraband i.e., 52 kg poppy husk was recovered in the present case, therefore, he does not deserve the concession of bail.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 1 year and 11 days, wherein recovery of contraband is marginally over and above the commercial quantity added with the fact that the petitioner 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 antecedent; investigation is complete, wherein conclusion of trial shall take considerable time as out of 16 prosecution witnesses, none has been examined after framing of charges on 14.05.2024 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 Nimesh 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

21.02.2025

Anuradha/Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>