

2025:PHHC:001105



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10135-2024
DECIDED ON: 08.01.2025

SULAKHAN SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shubham Goyal, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG 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.149 dated 14.11.2022, under Sections 21/22/29 of NDPS Act, 1985 registered at Police Station Lohian, District Jalandhar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Main officer, Ponce station Lohian, Jai Hind. Today I ASI along with ASI Avtar Singh no. 179, C/Ct Ramandeep Singh 1310, S/ct Harjinder Singh 1268, S/ct Harjit Singh 1151 with laptop and printer were patrolling on government car Balero camper no. PB 08 DS 0859, whose driver was S/ct Lovedeep Singh 1312 for checking of suspicious persons and were present on T-point Lohian Khas. Informer came to me, ASI and gave information that Sulakhan Singh @ Sulakhan

son of Joga Singh resident of Village Makhi, police station Lohian along with Amarbir Singh @ Amna son of Balwinder Singh resident of Kakhar Kalan, Police station Lohian are on a motorcycle and Jatinderjit Singh @ Jeetu son of Avtar Singh resident of Kakkar Kalan, Police station Lohian is on his Activa Scooter black colour and Gurnam Singh @ Raja son of Gurdip Singh resident of Sahajhanpur, police station Sultanpur Lodhi, Gurpreet Singh @ Gora son of Jinder resident of Latiya wala, police station Lodhi is on his Platina motorcycle and are coming from Tashpur side to Lohian side. They are having intoxicant capsule, intoxicant tablets, heroin and intoxicant substance with them and are coming to town Lohian for sale to customers. If now checking is done strictly by installing barricades then above mentioned all accused can be caught with huge quantity of intoxicant substance, tablets, capsule, heroin. This information seems trustworthy, truthful and right comes under offence under section 21/22/61/85 of NDPS Act. Ruqa is being written and is being sent through S/ct Ramandeep Singh 1310 to Police station for registration of case. Case be registered and case number be informed. ”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that earlier the petitioner has been granted the concession of anticipatory bail, but on receipt of FSL report, which disclosed 80 grams of Etizolam contained in those tablets, he was taken into custody.

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 40 loose intoxicant tablets containing Etizolam salt, were recovered and there were four accused persons, who were named in the instant FIR.

4. Analysis

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 1 year, 30 days and 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 added with the fact that investigation is complete, challan stands presented on 22.09.2023, charges stand framed on 07.10.2023 and out of total 14 prosecution witnesses only 1 has been examined so far, 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 right of the petitioner 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 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.

08.01.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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