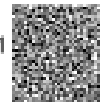


2025.PHHC:025641



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9113-2025
DECIDED ON: 21.02.2025

MALKEET SINGH ALIAS MALKIT SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Baljinder Singh Virk, Sr. DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., (Section 483 BNSS,) has been invoked for grant of regular bail to the petitioner in case FIR No. 130, dated 08.04.2024, under Sections 21-B, 27-A of NDPS Act, 1985, registered at Police Station City Fatehabad.

2. Facts

Facts as narrated in the FIR reads as under:-

“To The Station House Officer Police Station City Fatehabad Jai Hind. Today I ASI alongwith Head Constable Parveen Kumar No. 46, Head Constable Joginder Singh No. 252 with personal laptop and printer for controlling the crime on duty with private car white Swift no. HR 22 G 9657 being driven by myself when reached at the kaccha way of fields in North side before Aryan School Fatehabad via bypass Hisar Sirsa road Fatehabad service

road then a ritz car seen coming from the kaccha way. We stopped our car and signaled the ritz car to stop then its driver tried to run away after turning it back then due to narrow passage the car stopped after going in the fields. I apprehended the young boy and car with the help of companion officials and inquired qua name and address. He told his name Malkit Singh son of Diwan Singh son of Jagat Singh resident of Kata Kheri District Fatehabad. He was asked the reason to return the car and run away but could not reply satisfactorily. The number of car was found to be HR 20 S 6942 Make White Ritz and Engine No. D13A1328736, Chasis No. MA3FDEB1S00146922. That upon suspicion of having some narcotic substance either with young boy Malkit Singh or in his White Ritz car HR 20 S 6942 I introduced myself completely and served a notice under section 50 NDPS Act that I ASI Kashmir Singh no. 22 Police Post Gurunanakpura Fatehabad do hereby serve you Malkit Singh son of Diwan Singh son of Jagat Singh resident of Kata Kheri District Fatehabad vide notice that I am suspicion of having either with you or in your Ritz car No. HR22S6942 some narcotic substance due to which you personally and your car Make Ritz have to be searched. You are having legal right that if you and your car No. HR22S6942 want to be searched in the presence of any Gazetted Officer or the Magistrate then either of him may be called at the spot. Or you and your car No. HR22S6942 make Ritz can be produced before them. You express your wish. Upon which abovementioned accused Malkit Singh and witnesses signed respectively. Thereupon abovementioned accused Malkit Singh got recorded his reply to the notice under section 50 NDPS Act after reading and understanding well that I Malkit Singh son of Diwan Singh son of Jagat Singh resident of Kata Kheri District Fatehabad have heard the notice under section 50 NDPS Act given by you well and understood the same. I want my and my car No. HR22S6942 make Ritz to be searched before some Gazetted Officer. Therefore the Gazetted Officer may kindly be called at the

spot. Upon which abovementioned accused Malkit Singh and witnesses signed respectively. Then I ASI after the proceedings of notice and reply to notice I called upon from my personal mobile no. 70159-79285 at 7:09 PM Shri Rohit Kaushik Naib Tehsildar Tohana at his mobile no. 99107-97483 thereby requesting him to reach at the spot after making him acquainted with the circumstances. Shri Rohit Kaushik Naib Tehsildar Tohana reached after at 9-00 PM in vehicle White Swift no. DL12CT-8743 at the spot. I produced the apprehended accused Malkit Singh son of Diwan Singh son of Jagat Singh resident of Kata Kheri alongwith car No. HR22S6942 make Ritz alongwith witnesses and notice and reply to the notice. He after going through the notice and reply to the notice and after inquiring from apprehended young boy Malkit Singh and witnesses separately and directed me to search apprehended young boy Malkit Singh and his car No. HR20S6942 make Ritz as per rules. I tried to join the public persons in the investigation but all of them went away after showing their inconvenience. I conducted the search of Malkit Singh and his car No. HR20S6942 make Ritz as per the instructions of Shri Rohit Kaushik. A transparent pouch was recovered from the worn pant blue jeans of Malkit Singh and upon checking it the Heroin was recovered. The original RC of the vehicle was recovered from the dash board of car no. HR20S6942 and as per the RC the car found to be in the name of Jagjeet Singh son of Malkit Singh resident of Kata Kheri District Fatehabad. The recovered Heroin was weighed with electronic scale then 100 grams Heroin was recovered alongwith transparent pouch. I prepared the parcel of Heroin in white cloth and served with seal of KS/3 and prepared sample seal separately. Then the clothed parcel of Heroin alongwith sample seal were served with seal of BS-1 by Shri Rohit Kaushik Naib Tehsildar Tohana. The parcel of Heroin duly sealed and sample seal and car no. HR20S6942 make Ritz and original RC of car were taken into police possession vide seizure memo being case

property. The seizure memo was signed accused Malkit Singh and witnesses. Shri Rohit Kaushik Naib Tehsildar Tohana attested seizure memo and the white parcel clothed Heroin duly sealed and sample seal. I handed over the seal after use to Head Constable Parveen Kumar No. 46 and Shri Rohit Kaushik Naib Tehsildar Tohana kept the seal with himself. The accused Malkit Singh told upon inquiry that he has purchased this Heroin from Malkeet Singh son of Gopal Singh resident of Kata Kheri District Fatehabad. The accused Malkit Singh has kept 100 grams of Heroin in his possession and Malkeet Singh son of Gopal Singh has sold the abovementioned Heroin has thus committed the offence under section 21 B/ 27 A-61-85 NDPS Act. This writing is being sent to police station for registration of case through Head Constable Joginder Singh No. 252. Case FIR No. be informed after registering the same. The investigating officer may kindly be sent at the spot for further investigation. I alongwith companion officials and case property and accused Malkit Singh is present at the spot. Kaccha Way near bypass Hisar Sirsa road Fatehabad. Sd ASI Kashmir Singh no. 22 Police Post Gurnanakpura Fatehabad.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and no recovery whatsoever has been effected from the conscious possession of the petitioner. He further submits that the petitioner was called to the police station with regard to the inquiry about the earlier cases pending against him, but later on the recovery of contraband was planted upon 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 the recovery of contraband i.e., 100 grams of heroin was effected in the present case and the same falls under commercial quantity. Additional he submits that the petitioner is a habitual offender, as he is involved in other cases also.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 10 months and 12 days, wherein investigation is complete, challan stands presented on 14.06.2024 and charges have been framed on 16.10.2024 and out of total 15 prosecution witnesses, none have been examined so far, meaning thereby the 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.

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 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>