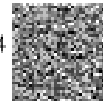


2025.PHHC:032204



236

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-9763-2025
DECIDED ON: 06.03.2025**

GURDEV SINGH**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Navjot Kaur, Advocate for
Mr. B.S. Bhalla , 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 483 BNSS, 2023 for grant of regular bail to the petitioner in FIR No.143, dated 10.12.2024, under Sections 21, 29 of NDPS Act (Section 27-A of NDPS Act added later on), registered at Police Station Bhindi Saidan, District Amritsar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

"Station House officer, Bhindi Saidan Police Station, "Jai Hind". Today, I, ASI along with ASI Gurjeet Singh, number 1878, PHG Ajit Kumar, number 3429, were traveling in a government vehicle numbered PB-65-BH-0756, driven by CT Jaskaran Singh, number 1958, along with a laptop kit along with BSF personnel, ASI Sham Singh, number 90254368/BSF 183 BN, HC Rambir Singh, number 957225776/BSF SHQ Khassa, and CT Ravinder Singh, number 12453344/BSF SHQ Khassa, for searching suspicious individuals. We were moving on the link road between village Jasraur and

village Panju Kalal. Near Dana Mandi, Jasraur, we were present for checkpoint duty. During the checkpoint duty, a young man appeared walking on foot from the direction of village Panju Kalal. Upon seeing the police party, he attempted to take out a weighty item from the right pocket of his jacket and throw it away. ASI Gurjeet Singh, who was part of the police party, caught him by his right knee and took him into custody. When I, ASI, asked for his name and details, he identified himself as Gurdev Singh, son of Mukhtar Singh, resident of Tanana, Police Station Bhindi Saidan. Before checking the Polythene-coated envelope that the detained individual was holding in his right hand, I made every possible effort to include public witnesses from the surrounding area. However, every individual cited personal reasons and refused to become a part of the police proceedings. Thus, in the presence of my fellow officers, I opened the Polythene-coated envelope held by Gurdev Singh's right hand and checked its contents. Inside, heroin was recovered. Upon strict questioning regarding the recovered heroin, Gurdev Singh revealed that he had purchased this heroin from Lakhbir Singh alias Lakha, son of Mehal Singh, resident of Bhindi Saidan. When weighed on an electronic scale, the recovered heroin amounted to 45 grams. The seized heroin was packed separately in a plastic box and sealed with a cloth parcel, and I, ASI, sealed it with my GS stamp. A separate sample seal was prepared, and Form No. 04 was completed. After sealing, the items were handed over to ASI Gurjeet Singh, number 1878, for further action. During the body search of the accused Gurdev Singh, one mobile phone OPPO A-5S, containing SIM number 9914576184, was recovered from the left pocket of his jacket. The recovered mobile phone was separately listed and taken into police possession as evidence. Since the recovery of 45 grams of heroin was accidental (by chance), there was no opportunity to call the local magistrate or a gazetted officer to the scene. A report under Section 57 of the NDPS Act is being sent to the concerned GO. As a result, accused Gurdev Singh, son of Mukhtar Singh, resident of Tanana, has been found in possession of 45 grams of heroin, committing an offence under Sections 21, 61, and 85 of the NDPS Act. Furthermore, Lakhbir Singh alias Lakha, son of Mehal Singh, resident of Bhindi Saidan, committed an offence under Sections 29, 61, and 85 of the NDPS Act by supplying this heroin to Gurdev Singh. A case is being registered, and a formal request is being written and handed over to PG Ajit Kumar, number 3429, to be sent to the police station for the registration of the case. Once the case is registered, details of the case number should be communicated. Special reports should be prepared and sent to the local magistrate and senior officers, and the control room should be informed via wireless communication. I, ASI, along with my fellow

officers and BSF personnel, am currently engaged in further investigation at the scene. Location: Near Dana Mandi, Jasraur Time: 06:20 PM, Sd/ Gurdev Singh, ASI, Bhindi Saidan Police Station Date: 10-12-2024"

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is on better footing than co-accused Lakhbir Singh @ Lakha, who has been granted the concession of anticipatory bail by this Court vide order dated 13.02.2025 passed in CRM-M-7999-2025. He further contends that the recovered contraband i.e. 45 grams of heroin is non-commercial in nature. It has been further contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He does not controvert the abovesaid fact and seeks dismissal of the instant petition on the ground that the alleged contraband i.e. 45 grams of heroin was recovered from the present petitioner. He further contends that challan is yet to be presented as investigation is not yet complete.

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 months and 21 days for which the petitioner has suffered incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; the petitioner is on better footing than co-accused Lakhbir Singh @ Lakha, who has been granted the concession of anticipatory bail by this Court vide order dated 13.02.2025 passed in CRM-M-7999-2025 in addition to the fact that challan is yet to be presented, meaning thereby

investigation is not yet complete, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, 2018(2) ***R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. 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 him 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.

06.03.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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