



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

102+250

CRM-M-10903-2025(O&M)

Date of decision: 04.03.2025

Shubham

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-9111-2025

Having moved this application under Section 528 of BNSS, the petitioner seeks permission to amend para 6 of the grounds of the main petition.

Learned counsel representing the petitioner submits that he was not aware of the petitioner being involved in another criminal case and therefore this fact could not be mentioned.

Application is allowed, as prayed for.

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.211 dated 24.07.2024 under Section 18(c) of NDPS Act (Section 29 of NDPS Act and Section 238(a) of BNS added later on) registered at P.S Julana, District Jind.



2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ To, The Station House Officer Police Station Julana Jai Hind. Today i Pål along with EASI/HC Rajesh Kumar 386, HC Vijay 108, Constable Ankit 484, Constable Sanjeet 240 along with personal laptop and printer in regard to patrolling and enquiry of crime travelling in official vehicle bearing registration number HR31-GV-6747 driver EASI/C Vinod 881 was present at Julana near Mali railway gate when special informer came to I PSI and informed that two young boys Jai Bhagwan son of Jagbir resident of village Putthi wearing white shirt and black pants and another boy Manjit son of Suresh resident of village Devarang who is wearing black T-shirt and bine jeans pants and carrying narcotics in back packs on their shoulders are standing on village Kamach Kheda road some distance in front of the temple built on Julana-Mali road waiting to sell drugs to a customer. If immediate raid is done the above young boys can be subdued with drugs. Since the information is confirmed, the PSI has prepared a notice 42 NDPS Act and sent it to police station in the hands of Constable Asikit No.484 for information. Time is 03.20 PM. Then I informed my fellow employees about the informant. PSI Amit along with colleagues travelling in official vehicle reached in front of temple on Julana-Mali Road on Bunch Kamar Kheda Road at a distance of around 800 meters and saw two boys standing near the room constructied as told by the informer who on seeing the police party coming towards them started walking briskly towards Village Kamach Khera side and PSI Amit overpowered both the boys with the help of colleagues and asked them their names and addresses then the first boy told his name to be Jay Bhagwan som of Jagbir resident of Village Putthi District Hisar and second boy told his name to be Manjit son of Suresh resident of Village Dewara Diator last on which on them having some neance with the Amit while giving i introduction to the boys caught gave the separate notice U 50 NIPS ACT both the boys that PS1 Amit Detective Staff find inform you through notion that you Jay Bhagwanson of Jagbir resident of Village Putthi District Haar and Manjit son of Suresh resident of Village Dewarar Dorndare be searched in connection with drugs on which you have the legal right that duty magistrate



of gazetted officer could be called on to the spot fire doing the search of yours as well as of the back packs or you could be presented along with your back packs to them for search. Clear your stances in regard to search. The accused persons Jay Bhagwan and Manjit aforesaid and the witnesses affixed their respective signatures on the notices. Then the accused persons Jay Bhagwan and Manjit after reading the notices U/x 30 NDPS Act given by PSI Amit and after understanding the same accused Jai Bhagwan aforesaid got his reply to the aforesaid notice recorded that I Jai Bhagwan son of Jagbir resident of Village Putthi District Hisar have read and understood the notice given by you PSI Amit Detective Staff Jind. I want to call a gazetted officer and conduct a search in front of him for the purpose of searching me and my backpack in relation to narcotics. Reply notice was recorded. The reply notice was signed by the accused Jai Bhagwan the aforesaid and the witness. Then the said accused Manjit filed his answer notice that I Manjit son Suresh village Devrad District Jind have read and understood the notice given by you PSI Amit Detective Staff Jind. I want to call a gazetted officer and conduct & search in front of him to the purpose of searching me and my back pack related to narcotics. Answer notice was recorded. The reply notice was signed by the accused Manjeet and the witness. At 04.40 PM, after getting the daily diary report of notice 42 NDPS Act has appeared from Julana police station, who has placed the notice 42 NDPS Act duplicate daily report DDR No.28 at 04.10 PM dated 24.07.2024 before me. Then from my mobile number. 9416533756, from the list of gazetted officers appointed by District Deputy Commissioner Jind, I called up on the mobile no. 99118-86773 Balram Jakhar Naib Tehsildar Jind was contacted again and again, which could not be contacted, on which I spoke to other officials of the District Deputy Commissioner, Jind, and contacted Mr. Balram Jakhar Naib Tehsildar Jind on his mobile number 9650555927 at 06.04 PM, informing him of the facts and requesting him to arrive on time. After waiting Mr. Balram Jakhar Naib Tehsildar Jind arrived at the spot at 06.52 PM along with his staff car. The passersby were asked to be witnesses who after explaining their compulsions went away from the spot without stating their names and addresses. Then I explained the facts



orally to the gazetted officer Mr. Balaram Jakhar and presented notice 50 NDPS ACT, reply notice 50 NDPS ACT, arrested accused persons Jai Bhagwan and Manjit to him, who after SEEN the notice 30 NDPS ACT and reply notice 50 NDPS ACT, after searching me according to my rules, without leaving any evidence, issued orders to search the arrested accused persons Jai Bhagwan and Manjit. Then, according to the order of the gazetted officer Mr. Balram Jakhar, I brought the search of the accused Jai Bhagwan into effect then according to the rules, no narcotic substance was found, then I searched the back pack of the said accused Jai Bhagwan's shoulder, colored black, brand AIR diamond, and 3 packets wrapped with tape were found inside the bag which I removed the tape and checked then as per my experience and from the smell of the packets opium was recovered. The weight of the three packets was weighed on computerised scale then the weight came out to be 03 KGS and 043 Grams packed with polythene. Then I brought the search of the accused Manjit into effect as per rules then no narcotic substance was recovered from him then I searched the back pack of the said accused Manjit's shoulder, colored black, brand AIR diamond, and 2 packets wrapped with tape were found inside the bag which I removed the tape and checked then as per my experience and from the smell of the packets opium was recovered. The weight of the two packets was weighed on computerised scale then the weight came out to be 2 KGS and 002 Grams with polythene. Then I put the pure opium packets recovered from the accused persons Jai Bhagwan and Manjeet in their back packs along with polythene and prepared 2 different cloth pads and sealed both pads with my seal AK/3 and sample seal was prepared and Mr. Balaram Jakhar sealed both pads of opium and sample seal with his seal VS/1 and after the seal kept the stamp with himself. Both the seized opium wrapped in polythene with all stamps AK/3 and VS/1 sample seal were taken into possession by the police through files as evidence on which accused persons Jai Bhagwan and Manjeet the said witnesses signed their respective signatures and Mr. Balram Jakhar verified exhibits of Opium and files. I have submitted the sample stamp after my stamp to EMSI/HC Rajesh Kumar 386. During the seizure of opium, I made a videography by policeman Sanjit 240 from my



mobile phone. The said accused persons Jai Bhagwan and Manjeet have committed the crime under Section 1B-C/61/85 INDPS ACT by keeping opium in their possession, therefore the complaint is being sent in the hands of Constable Sanjeet No.240 to the police station for getting a case registered. The FIR number be informed after being registered and another investigating officer be sent to the spot for doing further investigation. I PSI along with colleagues along with the accused Jai Bhagwan and Manjit and the case property am present on the spot. At Near Tempile Kamach Khera Road Village Desh Khera. SD/- Amit PSI (PSI Amit) Detective Staff Jind. Dated 24.07.2024 at 08:00PM. Mobile No.9416533756. Today at the police station on receiving the aforesaid complaint in the hands of Constable Sanjeet No.240/Jind FIR No.0211 dated 24.07.2024 U/s 18-C/61/85 NDPS Act was registered in Police Station Julana in regard to the aforesaid offence and copies of FIR were prepared through computer and copies of FIR will be sent as special report in the service of Illaqa magistrate and officials through post. Copy of FIR and original complaint were sent in the hands of the Constable to the investigating officer on the spot. By appointing ASI Anil No.448/J Police Station Julana as the second investigating officer has been informed through telephone to search the spot. ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that false recovery has been foisted upon the petitioner as nothing was recovered from his possession. Name of the petitioner has surfaced only in the disclosure statement of co-accused Manjit and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as the case is still pending for framing of charges.

On behalf of the State

4. 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 06 months and 22 days. It is not controverted that nothing was recovered from the possession of the petitioner, who has been nominated only on the basis of disclosure statement of the co-accused. Though, he submits that the petitioner is involved in another criminal case also.

Analysis

5. Be that as it may, considering the fact that the alleged recovery in this case has been effected from co-accused and no specific role is attributed to the petitioner and his name only cropped up in disclosure statement suffered by co-accused Manjit and that the petitioner has suffered sufficient incarceration for almost 06 months and 22 days, challan stands presented on 16.01.2025 and charges are yet to be framed, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”

6. 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 as 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 the 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 land the petitioner in a situation of denial of concession of bail.



Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 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.

**(SANDEEP MOUDGIL)
JUDGE**

04.03.2025
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No