



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12287-2025
DECIDED ON: 29.04.2025

GURBACHAN KAUR ALIAS BACHAN KAUR
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Bhupinder K. Bhangu, 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 483 B.N.S.S for grant of regular bail to the petitioner in case FIR No. 0160 Dated 21.06.2024 under Section 22/29/61/85 of NDPS ACT Police Station Kotwali Kapurthala (Annexure P-1), District Kapurthala.

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

“SHO, PS Kotwali Kapurthala, Jai Hind, Today myself ASI alongwith ASI/CR Amarjeet Singh No.1239/KPT, ASI/LR Jarnail Singh No. 1419/KPT, L/S CT Harjit Kaur No.328/KPT, Sr.Constable Navjeet Singh No. 242/KPT alongwith Laptop, Printer and investigation kit on search duty Govt vehicle bearing No.PB-65-BG-5519 driven by ASI/LR Rupinder Singh No.975/KPT on CASO Road were going to Nawan Pind Bhathe when the police party reached near Peer Babe di Jagah than a Women aged about 50-60 years come from left side street. After looking at

the police party, she had thrown one black colour polythene she was carrying in her hand on the grass in the street on which myself ASI alongwith L/S/CT Harjeet Kaur No.328/KPT nabbed her on the basis of suspicion after stopping the vehicle. After introducing myself and my fellow officials, I asked her name and address and she told her name Gurbachan Kaur W/o Resham Singh, R/o Nawan Pind Bhathe, PS Kotwali Kapurthala. Myself ASI in the presence of L/S/CT Harjeet Kaur No.328/KPT asked the above Gurbachan Kaur about the black colour polythene thrown by her that what is in the polythene? She was not able to give any satisfactory reply. Before checking the black colour polythene thrown in the grass, myself ASI tried to join public/independent witness but everybody shows their inability and nobody got ready to join police party and myself ASI in the presence of fellow officials, checked the black colour polythene thrown by the above Gurbachan Kaur after picking up the same and intoxicant substance was recovered from the same. Myself ASI after taking the weighing machine from the investigation kit, weighed it and on weighing, it comes to 150 grams of intoxicant substance. After keeping the recovered intoxicant substance in transparent polythene in plastic box, the parcel was prepared and sealed the said parcel with my stamp AK. Sample stamp is prepared separately. The recovered intoxicant substance was taken in police possession vide separate recovery memo, the written information regarding the same is sent to senior officer. After using the seal, handed over to ASI/LR Jarnail Singh No.1419/KPT. The accused Gurbachan Kaur by keeping 150 grams intoxicant substance has committed the offence under section 22/61/85 of NDPS Act. After preparing the ruga, it is sent to Police Station through S/CT Navneet Singh No.242/KPT for registration of FIR. After registration of FIR, the no. be informed. The control room be informed through wireless. Special reports be prepared and sent to senior officers. Myself ASI alongwith fellow officials busy at the spot and investigating.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and there is non-compliance of Sections 42 and 50 of NDPS Act. Moreover, as per the prosecution story, the recovery was made from a thoroughfare, therefore, it is highly improbable that no independent witness was available there to join the proceedings. It has been contended on behalf of the petitioner that after completion of investigation, challan stands presented to Court on 26.11.2024, charges have been framed on 24.02.2025 and out of total 09 prosecution witnesses none has been examined so far, meaning thereby, the conclusion of the trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 seeks dismissal of the instant petition on the ground that the quantity of alleged contraband i.e. 150 grams of intoxicant substance containing salt Alprazolam, is commercial in nature. He further contends that the petitioner is a habitual offender as she is involved in four other cases.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 10 months and 06 days added with the fact that investigation is complete, wherein after framing of charges on 24.02.2025 out of total 09 prosecution witnesses, none has been examined so far, which is suffice for this Court to infer that the conclusion of trial shall take

considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

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.

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.

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on her 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.

29.04.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No