



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

245

CRM-M-12656-2025

Date of Decision : **March 11, 2025**

JATINDER SINGH @ KUDHA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. P.S.Sekhon, Advocate for the petitioner.
Mr. J.S.Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

(1) The petitioner has filed petition under Section 439 Cr.P.C. (483 of BNSS, 2023) seeking regular bail in case FIR No.20 dated 19.2.2023 under Sections 21-C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (offence under Section 25 of NDPS Act, 1985 has been deleted), registered at Police Station Jhabal, District Tarn Taran.

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

“SHO Police Station Jhabal, Jai Hind. Today I ASI along with ASI Jassa Singh No.1804/TT, ASI Surjit Singh No.52/TT, ASI Paramdeep Singh No.608/TT, Constable Karanbeer Singh No.12393/TT, Constable Sukhmanpreet Singh No.759/TT, PHC Parminder Singh No.3889, PHG Amarjeet Singh No.4607 along with laptop, printer were on patrolling duty on Government vehicle Bolero bearing No.PB07T-4868 which was being driven by Driver LR/ASI Beant Singh No.1880 and were in search of anti-social elements and were going from Police Station CIA Tarn Taran to the area of Police Station

Jhabal, Bhikhiwind etc. and when police party was present at the turn of village Bhojna then secret informer came present before me ASI and gave the information that Jatinder Singh son of Baljit Singh resident of Village Sohal, Gurjant Singh son of Nachattar Singh resident of Village Sohal and Gursahib Singh alias Saba son of Late Baaj Singh resident of Village Padhri Kalan who are roaming in Alto car bearing No.PB02AY-4008 in the area of Jhabal and in other nearby areas are used to indulged in the supplying of heroin and today also they are roaming in the area along with heroin and in case the patrolling is being done near the Village Sohal then they can be got apprehended with heroin. That after taking the identification of all three young persons from the secret informer and after understanding their identity, the secret informer was got freed and the other officials were informed about the information and through Sh. Dawinder Singh DSP(D) Tarn Taran was informed on mobile phone and informed about the entire circumstances at the spot and requested him to reach at the spot. I ASI along with other officials while patrolling when police party turn towards Village Sohal then from the front one black coloured Alto car bearing No.PB02AY-4008 was seen coming and on seeing the police party in the vehicle and on seeing the police party in the uniform they tried to speed up their car and the Government vehicle was stopped in front of their vehicle and with the help of other officials they were got apprehended. In the car all three young persons were sitting and I ASI inquired about their name and address and the driver of the car disclosed his name as Jatinder Singh alias Ghuda son of Baljit Singh son of Kashmir Singh resident of Village Sohal, Police Station Jhabal and the person sitting along with him disclose his name as Gursahib Singh alias Saba son of Late Baaj Singh son of Jagir Singh resident of Village Padhri Kalan and the young person sitting on the backseat disclosed his name as Gurjant

Singh son of Nachattar Singh son of Karam Singh resident of Village Sohal Police Station Jhabal. They were issued the notice under Section 42 of NDPS Act and in the meantime Sh. Dawinder Singh DSP(D) Tarn Taran along with his gunman also reached at the spot in the official vehicle. He inquired the names and addresses of the young persons formally and the abovesaid persons disclosed their aforesaid names and addresses. Thereafter, DSP(D) introduced himself to them and stated to them that I am Dawinder Singh and the Gazetted Officer of the Punjab Government and also posted as DSP(D) Tarn Taran and I am having apprehension that you are in possession of some intoxicant substance for which the search upon you and of your vehicle is to be got conducted but you are having a legal right of getting your and your vehicle searched either from me or from some Magistrate or from some other Gazetted Officer to whom I can call at the spot. On this accused Jatinder Singh alias Ghuda, Gurjant Singh and Gursahib Singh abovesaid verbally stated that they are having full confidence upon him and stated that you can conduct search upon them and upon their vehicle. On this, the separate consent memos of all the accused persons abovesaid was got prepared and thereafter, I ASI as per the directions of DSP(D) after taking out the driver Jatinder Singh alias Ghuda abovesaid from the car conducted his search as per the rules and from the right pocket of the trouser worn by accused Jatinder Singh alias Ghuda heroin wrapped in plastic bag was got recovered. That the recovered heroin was got weighed with the help of electronic weighing machine and the total weight turns out to be 262 grams and the same was kept in the separate plastic box and parcel was prepared. Thereafter, accused Gursahib Singh alias Saba abovesaid was taken out of the car and from the right pocket of the lower worn by him one small plastic bag containing heroin was got recovered and on weighing the same on the electronic

weighing machine the total weight along with plastic bag turns out to be 10 grams of heroin and the same was kept in the separate plastic box and parcel was prepared. Thereafter, accused Gurjant Singh abovesaid was taken out of the car and the search was got conducted and from the right pocket of his trouser one plastic bag containing heroin was got recovered and the recovered heroin was got weighed with the help of electronic weighing machine and the total weight along with the plastic bag turns out to be 10 grams and the same was kept in the separate plastic box and parcel was prepared. All the three parcels were sealed by DSP(D) with his stamp DS and I ASI sealed the same with my stamp KS and sample stamp was prepared separately on the white paper. Stamp after use was kept by DSP(D) with himself and I ASI handed over my stamp to ASI Jasza Singh No. 1804/TT. The car Alto was taken into police custody vide separate memo. Since accused persons Jatinder Singh, Gursahib Singh and Gurjant Singh abovesaid by keeping 262 gram, 10 gram, 10 gram of heroin respectively in their possession have committed an offence under Section 21(C)/25/29/61/85 of NDPS Act.”

(3) **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the no alleged recovery has been effected from the conscious possession of the petitioner and the same was shown to be effected after sunset and before sunrise. He further submits that no private witness has been joined by the investigating officer and the similarly situated co-accused has been granted the relief of regular by a co-ordinate Bench of this Court vide order dated 19.10.2023 passed in

CRM-M-22024-2023. It has been 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 submits that after completion of investigation, challan has been filed on 9.8.2023 and the charges were framed on 12.9.2023 and 1 witness out of total 15 cited witnesses, has been examined.

4. Analysis

Be that as it may, considering the custody period i.e. 2 years and 16 days for which the petitioner has suffered incarceration; co-accused, namely, Gurjant Singh has been granted the relief of regular by a co-ordinate Bench of this Court vide order dated 19.10.2023 passed in CRM-M-22024-2023; the petitioner is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 9.8.2023, charges have been framed on 12.9.2023 and total 15 prosecution witnesses are cited, 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.

March 11, 2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No