



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

235

CRM-M-14054-2025
DATE OF DECISION: 20.03.2025

RAJ KUMAR @ RAJU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karajveer Singh , Advocate and
Mr. Piyush Khanna, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 439 Cr.P.C. {corresponding provision under section 483 of BNSS} for the grant of concession of regular bail to the petitioner in FIR No.161, dated 11.10.2019 (Annexure P-1) registered under Sections 22, 29 NDPS Act at P.S. City, Nawanshahar, Dist. SBS Nagar, Punjab.

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

‘Chief Officer, Police Station City Nawashahr, Jai Hind. Today, on 11-10-2019, at approximately 3:30 PM, 1, ASI along-with constable Sukhwinder Singh No. 3694/LDH and lady constable Geeta Rani No. 1009/LDH, had arrived by bus from Ludhiana to present accused individuals at the court complex in Nawashahr. While they were taking the accused Raj Kumar alias



Raju, son of Mohan Lal, resident of Paili, to the Honorable Court of Puneet Mohan Sharma AS), a young man had hidden narcotic pills in a white cloth wrapper and passed them to Raj Kumar. Upon noticing this, main constable Sukhwinder Singh caught Raj Kumar, and both were arrested with the narcotic pills. The guard in charge, ASI Gurmel Singh, was informed, who then telephoned the police station. Subsequently, along with ASI Soohan Lal No. 558/SBS Nagar, main constable Jarnail Singh No. 487/SBS Nagar, and constable Davinder Kumar No. 556/SBS Nagar, they arrived at the court complex in a private car with a laptop and investigative kit. At the parking area underneath the complex in Nawashahr, main constable Sukhwinder Singh, lady constable Geeta Rani, and ASI Gurmel Singh had taken both into custody. When ASI inquired about the circumstances, the young man who had passed the narcotic pills identified himself as Surjit Singh, son of Gareeb Singh, resident of Paili, Police Station Pojeval, District Shaheed Bhagat Singh Nagar. The accused Raj Kumar alias Raju, son of Mohan Lal, was also identified, who was being presented in the aforementioned court. ASI Surinderpal introduced himself as an investigative officer assigned to Police Station City Nawashahr and stated that he was accompanied by Soohan Lal, main constable Jarnail Singh, and constable Davinder Kumar, all in Police Department uniforms stationed at Police Station City Nawashahr. Raj Kumar's right hand was found holding the narcotic pills, which were wrapped in a white cloth. Upon counting, there were 290 narcotic pills that ASI inquired about. Surjit Singh or Raj Kumar could not provide any medical bill, permit, or other satisfactory documentation regarding the possession of these narcotic pills. Therefore, the narcotic pills, placed inside a plastic box and packaged with cloth, were sealed with a final seal from ASI and three separate seals were prepared for future use by ASI Soohan Lal. The parcel box with the narcotic pills was sealed with the SP's general seal and the sample seals. The ASI recorded the entire seizure of narcotic



pills in the police report. Both accused, Raj Kumar and Surjit Singh, signed the document along with main constable Jarnail Singh, and ASI Gurmel Singh as witnesses. ASI confirmed that Surjit Singh, son of Gareeb Singh, and Raj Kumar alias Raju, son of Mohan Lal, residents of Paili, Police Station Pojeval, District Shaheed Bhagat Singh Nagar, are accused under Sections 22, 29 of the NDPS Act, 1985. A written request was made to register the case and to forward it for record-keeping to constable Davinder Kumar at Police Station City Nawashahr. After filing the case, the number would be communicated to the control room, and special reports would be issued. I, along with the other accompanying officers, conducted the investigation with ASI Surinderpal as the investigative officer at Police Station City Nawashahr on 11-10-2019 today at the court complex, Nawashahr, at 07:00 PM The above-mentioned written material was seized, and the case was registered under the relevant sections. A copy of the FIR will be handed over to the investigating officer for further investigation. Special reports are being prepared to be submitted to the magistrate and official documents. Notifications will also be issued via wireless communication to the control room.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that as per allegations 290 loose intoxicating tablets have been recovered containing salt Buprenorphine Hydrochloride. He further submits that the investigation in this case is complete as challan stands presented on 30.01.2020 charges stands framed on 30.01.2020 out of 13 prosecution witnesses, 5 PWs have been examined so far and 8 PWs have given up and for the last one and a half year the trial is not progressing and is at the stage of defence evidence.

**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 3 years, 9 months and 7 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he involved many other FIRs.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 years, 9 months and 7 days, no further recovery is to be made from the petitioner as there is recovery of 290 loose tablets have already been effected and also considering the fact that since for the last one and a half year the trial is not progressing and is at the stage of defence evidence only wherein challan stands presented on 30.01.2020 charges stands framed on 30.01.2020 out of 13 prosecution witnesses, 5 PWs have been examined so far and 8 PWs have given up.

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 Nimesh 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 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 the concession of bail.



5. Relief

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

20.03.2025
anuradha

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