



228

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13108-2025

DATE OF DECISION: 07.05.2025

RAMESH KUMAR ALIAS RAMA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivrit Dhadnal, Advocate for
Mr. Sandeep Verma, Advocate the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

This petition has been filed under Section 439 of Code of Criminal Procedure, for grant of regular bail in FIR No. 26, dated 26.02.21, u/s 22(c) of NDPS Act, 1985, registered at Police Station Kabarwala, District Sri Muktsar Sahib. (Annexure P-1).

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

‘SHO, Police Station Kabarwala. ‘Fateh’. Today I, SI was present at Chowki Panniwala, then a written complaint from ASI Sivraj Singh 575/SMS by hand through PHG Rachhpal Singh 23524 was received, the contents of which is attached. "Incharge



Chowki Panniwala. 'Fateh'. Today, I, ASI along with Sepoy Makhan Ram No.1517/SMS and PHG Rachhpal Singh No.23524 riding private car regarding nakabandi at Dhipa Wali Link Road in the area of Panniwala was present. Then from the side of Panniwala a motorcycle was seen coming, which was signaled to stop with the torch light by me. The motorcyclist got panic and immediately tried to turn his motorcycle backward, which stopped itself. The motorcyclist was apprehended by me, ASI with the help of other staff employees. On my asking who disclosed his name as Ramesh Kumar @ Rama son of Gurditta Ram resident of Raiwala. From his possession a plastic bag hanging on the handle of his motorcycle bearing No.PB-305-7239, Marka V-15, Color black and red was found, in which some narcotic substance was suspected. I, ASI being local rank cannot take action in narcotic substance cases, therefore for further necessary action please come at the place of occurrence. Written information is being sent to you by hand through PHG Rachhpal Singh No.23524. I, ASI along with staff employees and apprehended persons is present at the place of occurrence. Sd/ Sivraj Singh ASI PP Panniwala, P.S. Kabarwala. Dated 25.02.2021 in the area of Panniwala AT 06:45 PM. Complaint of this information No.27 DDR is entered at Chowki Panniwala. I, SI with ASI Gurmeet Singh 553/SMS, SC Navdeep Singh 1066/SMS, SC Parveen Kumar 1148/SMS, PHG Gurmeet Singh No.32606 and PHG Rachhpal Singh No.23524 taking copy of the complaint riding government vehicle bearing No. PB-12G-9045 the driver of which C Harjeet Singh 359/SMS reached at the place of occurrence. Where ASI Shivraj Singh along with staff employees and the arrested person Ramesh Kumar @ Rama above was present and I, SI was brief about the situation of the occurrence. I, SI apprised about my identity to accused Ramesh Kumar @ Rama and told that I, Sukhdev Singh No.395/SMS is serving as Incharge Chowki Panniwala, Police Station Kabarwala. I have doubt that some narcotic substance is lying in your possession or in the plastic bag hanging on the right-side handle of motorcycle bearing No. PB-305-7329. Therefore, I want to search you and the plastic bag



hanging on the right-side handle of motorcycle bearing No. PB-30S-7239 in your possession, but under NDPS Act, you have legal right to get yourself checked and the motorcycle plastic bag hanging on the right-side handle of motorcycle in the presence of a Magistrate or any Gazetted Officer, who can be called at the place of occurrence or you can be brought to them. On which Ramesh Kumar @ Rama above told that I want myself and the plastic bag hanging on the right-side handle of motorcycle to be searched by a Gazetted Officer who can be called at the place of occurrence. Notice under section 50 was issued. Ramesh Kumar @ Rama above signed the same in Punjabi, and witnesses also put their signatures. Then I, SI informed on telephone to PCR/SMS and asked GO out. Then the PCR/SMS informed that S. Jasmeet Singh DSP (D) Sahib should be contacted for reaching at the place of occurrence. Time about 07:47 PM I, SI through telephone requested S. Jasmeet Singh DSP (D) to reach at the place of occurrence. Time 09:50 PM DSP Sahib riding government vehicle bearing No. PB-30R-9771 accompanying staff employees and equipment reached at the place of occurrence, who was briefed about the situation. Efforts were made to include independent witness, but all in vain. Then DSP Sahib apprised his name, address, rank and place of duty to the accused Ramesh Kumar Rama and told that I, Jasmeet Singh is serving as DSP(D) SMS and is a Gazetted Officer in Police Department. I have doubt that some narcotic substance is lying in your possession or in the plastic bag hanging on the right-side handle of motorcycle bearing No. PB-30S-7239. Therefore, I want to search you and the plastic bag hanging on the right-side handle of motorcycle bearing No. PB-30S-7239 in your possession, but under NDPS Act, you have legal right to get yourself checked and the motorcycle plastic bag hanging on the right-side handle of motorcycle in the presence of a Magistrate or any Gazetted Officer, who can be called at the place of occurrence or you can be brought to them. On which Ramesh Kumar @ Rama above told that I do not want to be searched myself and the plastic bag hanging on the right-side handle of motorcycle by a Magistrate or any Gazetted Officer. I have faith on



you, you can get searched me. On which notice under section 50 NDPS Act was issued. Signature of Ramesh Kumar @ Rama was got done in Punjabi and the witnesses also put their signatures. Then I, SI as per instruction of S. Jasmeet Singh DSP(D) SMS accused Ramesh Kumar @ Rama above Motorcycle Marka V-15 bearing No. PB-305-7239 plastic bag hanging on the right-side handle of motorcycle was searched. Then from the plastic bag polythene envelope narcotic pills Marka RADOL-100 (Tramadol Hydrochloride IP 100 mg SR Tablets) strips were recovered. On counting total 90 strips, each strip containing 10 pills (90x10=900 pills) in which 72 strips bearing Batch No.2930121, 12 strips bearing Batch No.3040121 and 06 strips bearing Batch No.2920121 was marked. All these recovered strips date of manufacture MFG 01/2021 and expiry EXP 06/2022. After checking accused Rakesh Kumar Rama above and his motorcycle no other narcotic substance or thing was found. The above recovered 90 strips of narcotic pills (total 900 pills) were transferred in the same polythene envelope and same plastic bag and prepared a parcel. Parcel was sealed by me, SI with my seal impression "SS". Sample seal was prepared on form M-29. After use the seal was handed over to ASI Gurmeet Singh 553/SMS. Then DSP Sahib sealed the above prepared parcel with his seal "JS" and attested the parcel. Sample seal Form M-29 was also sealed by DSP Sahib with his seal impression "JS". DSP Sahib after use retained his seal. Then I, SI the above parcel of narcotic pills sealed with SS+JS along with sample seal and Form M-29 and motorcycle Marka V-15 color black and red bearing No.PB-30S-7239 prepared separate memo of recovery and took into police possession. Signature of ASI Gurmeet Singh 553/SMS and S/C Navdeep Singh 1066/SMS signed as a witness. DSP Sahib attested the memo. Then I, SI on the instruction of DSP Sahib conducted personal checking of accused Ramesh Kumar @ Rama. From the right pocket of which 200/-rupees currency note and one mobile phone small size with button Marka Itel color black covered was found, which taken into police possession by preparing memo of recovery. Ramesh Kumar @ Rama signed the memo of seizure. ASI



Gurmeet Singh and SC Navdeep Singh witnesses the same and the memo was attested by DSP Sahib. Accused Ramesh Kumar @ Rama above could not produce any licence or permit for keeping narcotic substance in his possession. Who has committed crime for keeping 900 narcotic pills under section 22, 61,85 of NDPS Act. Therefore, complaint against Ramesh Kumar @ Rama above is written and is being sent by hand through C Makhan Ram No.1517/SMS to the police station for registering FIR. Number should be issued to the FIR after registering FIR. Special reports should be issued. PCR/SMS be informed and completion of Section 42 NDPS Act. I, SI along with staff employees is busy in investigation at the place of occurrence. Sd/- Sukhdev Singh I/C PP Panniwala, PS Kabarwala. Dated 25.10.2021. In the area of Panniwala AT 11:50 PM. Today, on receipt of the above complaint at Police Station, FIR against the above accused be registered through CCTNS and copy of FIR along with original complaint is being sent by hand as per instruction to SI at the place of occurrence. Special reports are being sent by hand through Senior Sepoy Sukhpal Singh No.238/SMS to the services of Ilqa Magistrate and higher officials. PCR/SMS is being informed through W/M. Section 42 NDPS Act is be completed.'

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. As per the allegations, from the handle of the motorcycle a plastic bag with 900 tablets of Radol-100 containing the salt Tramadol Hydrochloride IP 100 SR was allegedly recovered. He points out that the investigation in this case is complete as challan stands presented on 12.05.2021 charges stands framed on 23.07.2021 out of 27 prosecution witnesses, 3 PWs have given up and only 5 PWs have been examined so far after, elapsing of four years since filing of the charges, which is sufficient to infer that



the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

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.

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 is involved in other FIRs, moreso, the recovery i.e. 900 tablets of Radol-100 containing the salt Tramadol Hydrochloride IP 100 SR falls under the commercial quantity, hence, Section 37 of the NDPS is attracted.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 years, 11 months and 13 day, although other FIRs are pending against the petitioner yet the fact that is to be borne in mind is that in the instant case, challan stands presented on 12.05.2021 charges stands framed on 23.07.2021 and after lapsing of four years, out of 27 prosecution witnesses, only 5 PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose and as per the principle of the criminal jurisprudence, no one should be considered guilty,

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 “**Balwinder Singh versus State of Punjab and Another**”, SLP (Crl.) **No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

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

07.05.2025
anuradha

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