

2025:PHHC:037006



246 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13477-2025
DECIDED ON: 18.03.2025

DHARAMJIT KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Suram Singh Rana, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 035, dated 01.05.2024, under Sections 21C/61/85 of NDPS Act, 1985 registered at Police Station Ladowal, District Ludhiana.

2. Facts

The facts as narrated in the FIR reads as under:-

“To SHO, PS Ladhuwal, Ludhiana. Jai Hind. Today, I, ASI alongwith ASI Darshan Singh No. 1448/Ludh., ASI Balwant Singh 2736/Ludh., Ct. Pawan Kumar 3374/Ludh., L/HC Reena Devi 197/ Ludh., S/Ct Inderjeet Singh No. 1743/Ludh. alongwith Pvt. Laptop & printer on Govt. vehicle no. PB-08-DS-4490 whose driver was ASI Inder Singh No. 1473/Ludh were in a Nakabandi for checking suspicious & bad elements of the society near G.T. road toll plaza underneath the flyover on Ladhuwal Ludhiana Road, when we saw a hindu boy &

one girl who were on foot, were coming from Phillaur side and were going towards Ludhiana side. On seeking the police party, they got scared and immediately turned around when the said boy grabbed a small black polythene bag from the pocket of his pant & threw it on his right side on the ground and the girl accompanying him threw lady purse which she was carrying to her left side on the ground. Both of them were apprehended with the help of fellow police officials and on asking, the boy identified himself as Dharamjeet Kumar S/o Lt. Teli Ram, R/o house no. 145, Gali No. 3, Piru Banda, PS Salem Tabri, Ludhiana and when the girl was inquired by L/HC Reena Devi 197/Ludh, she identified herself as Amandeep Kaur w/o Sunny Gill, R/o Ato Waali Nahar, Gurain, Jalandhar. I, further asked them about the contents of black polythene and lady purse which was thrown by them, when both of them got nervous and told me that they both contained heroin. After this, I, told them to pick up and open the said black polythene and the lady purse and heroin was present in both. Said heroin was transferred to evidence bag which was subsequently weighed on a digital weighing scale and the heroin recovered from Dharamjeet Kumar came out to be 260 gram and the same recovered from Amandeep Kaur which she was carrying in her lady purse was 100 gram. The same was put by me in evidence bags in a plastic container for purpose of evidence & was signed by affixing my seal as "J.S.". Afterwards it was handed over to ASI Darshan Singh 1448/Ludh. The said heroin was seized and kept for evidence vide separate recovery memo. Recovery memo's were also signed by the witnesses. A sample of the same was prepared separately. Dharamjeet Kumar & Amandeep Kaur have prima facie committed offence U/s 21C-61-85 NDPS Act as they were in illegal possession of heroin. A Ruga against the abovementioned accused was sent after it was typed by S/ Ct. Inderjeet Singh 1743/Ludh. in a private computer and the same was printed and sent by hand through Ct Pawan Kumar 3347/Ludh. to the PS and an information prepared U/s 42 NDPS Act is also being sent to the Senior Officials for their perusal. A case be registered against the abovesaid accused. Special reports be prepared

accordingly. I, ASI alongwith other police officials busy at spot, in carrying out further investigation. Verified Jaswinder Singh ASI/ 1550, Crime Branch-3, Distt. Ludhiana, dated 01.05.2024 near Toll Plaza, below the flyover on Ladowal Ludhiana Road. At 09.05 pm, a Ruga was sent to the police station and a case was registered against the abovementioned sections. Original Ruga alongwith copy of FIR is being sent to the investigation spot through Ct Arvinda Nijd. Special reports have been prepared and are being sent to the Illaga Magistrate and other senior officials for their effective perusal vide ASI Gurmukh Singh 2185/Ludh. Control Room was informed accordingly.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on account of party fraction. He further submits that the present case is a case of chance recovery, as the petitioner was stated to be apprehended at a nakabandi laid down by the police party whereas he was actually apprehended in a raid conducted at the house of co-accused Amandeep Kaur at about 2 PM on 01.05.2024 and thereafter the present false case was registered by the police at 9.55 PM with the allegation that he was apprehended in the Nakabandi. He asserts that no independent witness has been associated.

4. On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that in the present case recovery of contraband is of 260 grams of heroin, which is commercial in nature.

5. Analysis

As per the prosecution's version, the petitioner, along with the co-accused, was walking on foot at night. Upon spotting the police party, they became nervous and discarded a black-colored polythene bag. However, this raises doubts about the prosecution's story, as it seems highly unlikely that, in the dark and from a distance, the police could accurately identify a black polythene bag being carried by a woman and then observe it being discarded, especially considering the alleged contraband was supposedly found within the bag. Moreover, the petitioner is a first time offender and has suffered incarceration for a period of 10 months and 12 days, wherein after framing of charges on 16.08.2024 out of total 13 prosecution witnesses, only 5 have been examined so far, meaning thereby, conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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. **Relief:**

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

18.03.2025

sham

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*