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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14307-2025
DECIDED ON: 21.03.2025

MANI SABHARWAL ALIAS MONEY SABHARWAL
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipin Kumar Sharma, Advocate for the petitioner.
Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS for grant of regular bail to the petitioner in the case FIR No. 91 dated 22.08.2024, under Section 21 and 29 of NDPS Act, Police Station Division No. 2, Jalandhar, District Jalandhar.

2. Facts

Facts as narrated in the FIR reads as under:-

"S.H.O. Police Station Division No: 2, Jalandhar. Today, I, ASI, along ASI Malkit Singh-515, HC Lalit Kumar No.-491, SR/CT-Surinder Pal-2294, CT-Pawan Suman-1052 and Govt. Passenger Vehicle No: PB65-AV-5603, its Driver-Jaspal Singh-1758 and with Laptop-Printer, was present at Y-Point Harnam Dass Pura, Jalandhar in connection with picket and patrolling and then from the side of Kapurthala Chowk, one clean-shaven young man was seeing coming on foot and on seeing the police party, he suddenly perplexed and started turning back. I, ASI, overpowered him on

the basis of suspicion with the help of co- employees and asked his name and address. He told his name as Sunny Vehmi Son of Sunil, resident of Geeta Colony, Gali No: 6, Kala Sanghia Road, Jalandhar, at present, resident of House No: NA246, Kishanpura, Jalandhar. Upon this, I, ASI, served Notice U/s 50 of NDPS Act to the above said Sunny Vehmi that there is suspicion of having some objectionable narcotic substance in your possession and due to this reason, your search has to be conducted. You have legal right that you can get your search conducted from any Magistrate Sahab or any Gazetted officer. He said that I have faith on you and you can conduct my search. Upon this, before conducting search of the above said Sunny Vehmi, the persons passing nearby were asked to join in the police party, but every person expressed his helplessness and nobody was become ready to join in the police party. Upon this, I, ASI, in the presence of co-employees, conducted search of the above said Sunny Vehmi under custody. Then from right pocket of the lower worn by him, heroin was recovered from a plastic transparent envelope of white colour and on weighing, the said recovered heroin was found 100 Grams. The recovered heroin was put in a separate plastic box and case property parcel was prepared. I, ASI, sealed the case property parcel of heroin of weight 100 grams with my seal bearing words GS and sample seal was prepared separately. After use, the seal was entrusted to ASI Malkit Singh-515. The above said Sunny Vehmi, by keeping 100 grams heroin in his possession has committed offence u/s 21/61/85 of NDPS Act. Upon this, after writing the information, the same is being sent to the police station by hand through CT Pawan Suman No: 1052 for registering the case. After registering the case FIR Number may be informed. After issuing special reports, the same may be sent to the Illaqa Magistrate Sahib and senior officers. I, ASI, along with co-officials, is busy in investigation at the spot. Today, in the area of Y Point Haram Dass Pura, Jalandhar AT 09:55 PM Sd/-

*ASI Gurmel Singh No. 2411 C.I.A. Staff, Commissionerate
Jalandhar. Dated 22.08.2024.*

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 on the basis of disclosure statement of co-accused Sunny Vehmi from whom the 100 grams of heroin was recovered and he was granted the concession of bail vide order dated 09.12.2024 (Annexure P-4) passed by the trial Court. He submits that as per the story of the prosecution 50 grams of heroin was recovered of the present 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. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases as well.

4. Analysis

Be that as it may, considering the fact that the alleged recovery of contraband from the petitioner is 50 grams of heroin and main accused Sunny Vehmi from the 100 grams of heroin was effected, has already been enlarged on bail by the trial Court. Moreover, the custody period undergone by the petitioner i.e., 6 months and 22 days, wherein investigation is complete, challan stands presented on 19.10.2024, charges are yet to be framed and thereafter 13 prosecution witnesses are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful

purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

5. **Relief:**

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

21.03.2025

Meenu

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