



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14812-2025
DECIDED ON: 04.04.2025

BALWINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jaswinder Singh, Advocate for
Mr. Harkirat Singh Bhogal, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of B.N.S.S r/w section 439 of Cr.P.C. for releasing the petitioner on bail in case F.I.R No. 059 dated: 12.05.2024, under Sections 15, 25 & 29 of N.D.P.S. Act, 1985, Police Station Doraha, District Khanna (Ludhiana).

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

“Main Officer Police Station, Jai Hind, Today I ASI along with ASI Sikander Raj No. 433/Khanna, Constable Charanjeev Singh No. 697/Khanna, Constable Satnam Singh No 624/Khanna, PHG Rajpal Singh No. 29403 on Government Vehicle RRR for checking of suspicious person, suspicious vehicles and to lay down mobile check post were present at Kado Round about Doraha, time must be around 05:15 AM then one secret informer came to me ASI and

informed me secretly that Kulwinder Singh S/o Nirmal Singh R/o Village Mehgalganj, District Lakhimpur, U.P who is cleaner at truck number PB 10 HQ 9215 (16 Tire). That this truck is of village Buani. That Kulwinder Singh in above mentioned truck is brining poppy husk in huge quantity and is trying to sell to some person/persons and is standing in the above mentioned truck at service lane near Malipur Cut on National Highway from road going from Ludhiana to Khanna side, and if raid is conducted right now then above mentioned Kulwinder Singh can be caught red handed along with truck having and huge amount of poppy husk. That the above mentioned information is true and reliable by the secret informer. Above mentioned Kulwinder Singh on keeping his custody huge amount of poppy husk have committed an offence U/s 15-61-85 NDPS Act. Ruqa under above mentioned section against Kulwinder Singh is scribed and is being sent by hand through PHG Rajpal Singh No 29403 to police station to register the case. After registration of case its number be informed. After preparing the special reports be sent to illaga magistrate and other senior officers. DCR Khanna be informed. I ASI along with other police officials is busy in investigation.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was nominated in the present FIR only on the basis of disclosure statement of co-accused Kulwinder Singh. He further contends that nothing has been recovered from the conscious possession of the petitioner as whatever recovery i.e. 550 kg of poppy husk was effected that was from co-accused Kulwinder Singh. 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 seeks dismissal of the instant petition on the ground that the quantity of recovered contraband i.e. 550 kg of poppy husk is commercial in nature.

4. Analysis

Be that as it may, considering the custody period i.e. 10 months and 17 days for which the petitioner has suffered incarceration; the petitioner was nominated in the present FIR only on the basis of disclosure statement of co-accused Kulwinder Singh; nothing has been recovered from the conscious possession of the petitioner as whatever recovery i.e. 550 kg of poppy husk was effected that was from co-accused Kulwinder Singh as well as the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate.

Also considering the fact that investigation is complete, challan stands presented to Court on 03.10.2024, charges have been framed on 23.10.2024 and out of total 13 prosecution witnesses one witness has been examined and two witnesses have been given up so far, 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. RELIEF:

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.

04.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No