

2025:PHHC:038941



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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-14406-2025
DECIDED ON: 21.03.2025**

ANIL KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.P. Garg, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This is fourth Petition under section 483 of Bhartiya Nagrik Suraksha Sanita (BNSS) for grant of regular bail to the petitioner in case FIR No. 129, dated 20.06.2022, under Sections 22, 25 of NDPS Act 1985 (Section 27-A & 29 of the NDPS Act were added later on), registered at Police Station Special Task Force, SAS Nagar (Mohali), during the pendency of trial, in the interest of justice.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of ruqa, the SHO, P.S. STE, Phase-4, SAS Nagar (Mohali), Jai Hind. Today, myself ASI alongwith SI Dilbag Singh 835/ASR-City, SI Baljinder Singh 1035/TT, SI Vinod Sharma 29/CP

Amritsar, ASI Rohit. Sharma 2620/ASR, ASI Nirmail Singh. 914/ASR-City, ASI Shamsher Singh 316/ASR-City, HC Ajay Kumar 2967/ASR-City as Computer Operator, riding on Government vehicle No. PB65 AN 6790 Bolero Camper whose driver is HC Jatinder Singh 3041/ASR-City, in connection with some secret information were present near Majitha Road by-pass, Amritsar that one informer came to me and informed that Balwinder Singh @ Kala s/o Tarlok Nth, R/Tung Bala, Majitha Road, Amritsar who used to sell intoxicant tablets from Amritsar riding on motorcycle and supply intoxicant tablets to his customers. Today also on his motorcycle No. PB02ED-2002 black colour mark TVs is going to Gali No.7, Near Shehnai Palace, Majitha Road, Amritsar to supply intoxicant tablets to some customer. In case barricade is laid at that place, he can be caught alongwith intoxicant tablets. On this, myself ASI informed the fellow officials reached at Majitha Road, Bye-pass, Shehnai Palace, Majitha Road, Amritsar and myself put a barricade at the place informed by the informer. After some time, as informed by the informer, one mulla-fashion young man was spotted" coming on motorcycle No. PB02ED-2002 black colour mark TVS. He kept one weightage plastic carry-bag on the oil tank. Then myself ASI alongwith the fellow officials caught the rider of motorcycle No. PB02ED-2002 black colour mark TVS and asked his name/address, then the above young man disclosed his name Balwinder Singh è Kala s/o Tarlok Nath, R/o House No.241/1, Gali No.7, Tung Bala, Majitha Road, Amritsar. I introduced myself to him that I am ASI Surinder Kumar 1052/Tarn Taran and Presently posted at STF-Border Range, Amritsar and I am wearing my uniform on which my name-plate is fixed. I have received information of intoxicant tablets in your possession for which your and your motorcycle No. PB02ED-2002's search is conducted to be made out but you have legal right that you can get your and your motorcycle's search conducted from any Magistrate or Gazetted Officer which I can arrange. On his the

accused told that you may call some gazetted officer. On this, myself ASI called I from my mobile to Sh. Sikandar Singh PPS, DSP and informed him the circumstances of the case and requested him to reach on the spot. After some time; DSP alongwith his staff and Government vehicle reached on the spot. Myself ASI informed him the circumstances on the spot on which the DSP introduced himself saying that I am DSP Sikandar Singh, posted at ST Border Range, Amritsar. I am wearing my uniform on which my name plate is fixed. I am appointed as Gazetted Officer of Punjab Government. I got information of intoxicant tablets in your possession for which you and your motorcycle No. PBOZED 2002 black colour have to be searched but you have legal right that you can get you and your motorcycle No. PB02ED 2002 black colour searched in the presence of any Magistrate or any other gazetted officer which I can arrange. On this, the accused told the DSP that I have full faith on you and you can get me searched. On this memo of consent got prepared u/s 50 NDPS Act and on this, the accused put his signatures. Before conducting search of the accused, public witness was tried to join the police party but nobody, could join due to enmity. Then myself ASI on the directions of DSP conducted search of the accused. When the black carry-bag caught in his hand was searched then intoxicant tablets mark Alprasafe-0.5 in which Alprazolam IP 0.5 mg boxes were recovered. Total number of boxes as 25, out of which on 15 boxes, batch No. PCCAA936 and expiry dated 02/2025 was mentioned. On remaining 10 boxes, batch No. PCCAA722 and expiry dated 007/2023 was mentioned. Each box contained 60 strips i.e. total 600 intoxicant tablets. In total 25 boxes total 15000 intoxicant tablets were recovered. Recovered intoxicant tablets alongwith black carry-bag were packed in a parcel. Myself ASI sealed the parcel with my seal SK and Shri Sikandar Singh PPS DSP STE Border Range, Amritsar sealed the same with his seal SS. One sample parcel was also prepared. Myself ASI after use handed over the seal to ASI

Nirmail Singh 914/Amritsar and DSP kept his seal with him. One cloth parcel containing 25 boxes of intoxicant tablets mark Alprasfe-0.5 duly sealed with seal SK and SS alongwith sample, parcel were taken in police custody vide recovery memo. Motorcycle No. PB02ED 2002 black colour mark TVS was also taken in police custody. That Balwinder Singh Kala s/o Tarlok Nath, R/o House No.241/1, Gali No.7, Tung Bala, Majitha Road, Amritsar by keeping in his possession committed offence /s 22, 25 NDPS Act. On this, against Balwinder Singh C Kala above s/o Tarlok Nath R/o Tung Bala, Majitha Road, Amritsar myself ASI printed ruga from the computer and copy of ruga was sent on mobile phone whatsapp to Police Station and e-mail of police station ie psstfsasnagar@gmail.com. After registration of case, myself ASI informed on whatsapp No. 98720-67424 and e-mail ID: sk3532387@gmail.com and special reports sent to Ilaka Magistrate, Control Room and Senior Officers. Still ruqa sent by hand through ASI Shamsher Singh 3216/Amritsar STF Border Range, Amritsar to P.S. STE SAS Nagar. Myself ASI was busy on the spot in the area of Shehnai Palace, Majitha Road, Amritsar at 06:00 PM, STF-Border Range, Amritsar, dated 20.06.2022 on receipt of rug and after registration of FIR under above sections against above Balwinder Singh & Kala. Copy of special report sent to the Hon'ble Ilaka Magistrate and senior officers vide. E-mail: psstfsasnagar@gmail2.com and e-mail: Sk3532387@gmail.com. Special reports also sent to the Investigating Officer to Ilaka Magistrate and senior Officer. Original ruqa and copy of FIR send by hand through ASI Shamsher Singh 3216/Amritsar to ASI Surinder Kumar, STE Border Range, Amritsar. MHC P.S. was directed to complete the records.'

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 second disclosure

statement of co-accused/main accused namely Balwinder Sing @ Kala, who first gave disclosure statement against some other person namely Satnam Satta and later on he was made to change the complete version of his disclosure statement. He submits that the recovery of 10 lacs as drug money and 2,03,250 pills of different names and 600 capsules were recovered from the co-accused namely Lakshay Dhawan, who has already been granted the concession of bail vide order dated 06.09.2024 (Annexure P-3). He has further drawn attention of this Court that the main accused namely Balwinder Singh has also been granted the concession of bail vide order dated 06.08.2024 passed in CRM-M-36751-2024.

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 10 months and 14 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected falls within the category of commercial quantity, therefore, prays for dismissal of the petition.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 2 years, 8 months and 14 days and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents and main accused/co-accused have already been granted the concession of bail added with the fact that investigation is complete, challan stands presented on 03.01.2023, charges have been framed on 01.07.2023 and out of total 22 prosecution witnesses, none has been examined so far. 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.

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>