



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16083-2025
DECIDED ON: 28.03.2025

JASDEV SINGH ALIAS BALLU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satnam Singh Gill, 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 for the fourth time under Section 483 BNSS for grant of regular bail to the petitioner in case FIR No. 41 dated 22.04.2024, under Section 18 NDPS Act (Subsequently Sections 15, 27 and 29 NDPS Act, 1985 were added) Police Station Dirba, District Sangrur.

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

Copy of ruqa, SHO, Police Station, Dirba, Fatehpur Sikri, along with ASI Harjoginder Singh 95/Sangrur; C. Davinder Singh 1580/Sangrur, and PHG Darshan Singh 48260, were riding in a Govt. vehicle bearing registration No. PB-13AR-6176, a Bolero being driven by a constable Ranjit Singh 1285/Sangrur with laptop,

printer, and present at Patran-Sangrur Road picket in the area of village Kakuwal in connection with nakabandi and search for suspicious persons keeping in view the Parliamentary Election and vehicles were being checked. During the checking, at approximately 10:00 AM, one loaded Canter (truck) No. Pb-10HV-6279 came from Patran side. I, SI made a signal from hand, stopped the canter, and asked the name of the driver of the above-mentioned canter (truck). He disclosed his name as Ram Lal, son of Chand Lal, resident of village Maroli Kalan, Police Station Sandor, District Malerkotla His description is as follows: aged about 53 years, height 5'9", complexion wheatish, trimmed hair and beard, body thin and active, and the middle finger of his right hand was amputated. A Sikh gentleman was sitting in the cabin towards the driver's side and upon asking, he disclosed his name as Jeewan Singh, son of the late Tara Singh, resident of village Siyar, Police Station Maloud, District Ludhiana. His description is as follows: Date of Birth 10.07.1977, height 5'7", body thin and active, having hair and beard. Thereafter, I, SI, with the help of companions searched the cabin of canter (truck) No. PB-10HV-6279. During the check, a heavy transparent polythene envelope was found on the dashboard of the vehicle and opium recovered from it. Upon inquiring regarding the recovered opium mentioned above, Jeewan Singh and Ram Lal told me that there is opium in the transparent polythene. Upon inquiring by me, SI mentioned above Jeewan Singh and Ram Lal could not produce any license/permit. Thereafter, I, SI, weighed the recovered opium including the weight of polythene, which came to be 2 kg. 500 grams I, SI, put the recovered opium, including the polyethylene envelope, in a plastic container, then in a cloth bag and converted into a parcel

and sealed the same with my seal bearing the letters BS. The sample seal was prepared separately. After use, the seal was handed over to ASI Harjoginder Singh 95/Sangrur. Thereafter, I, SI, took the parcel of a plastic container containing 2 kg. 500 grams of opium duly sealed with the seal bearing the letters BS along with the sample seal into police possession through A separate recovery memo. The above-mentioned Jeewan Singh and Ram Lal committed an offense under sections 18/61/85 of the NDPS Act by keeping 2 kg. 500 grams of opium in their canter (truck) No. PB-10HV-6279. Upon this, the printout of the ruqa was taken out, and the same is being sent to the police station, Dirba, by hand through P.H.G. Darshan Singh, 48260, for registration of the case under the said section against the above-mentioned Jeewan Singh and Ram Lal. After registration of the case, the case number may be assigned. Special reports will be issued. Incharge and Control Room will be informed. I, the SI, along with companions, am present at the scene in connection with the investigation. In the area of: Patran-Sangrur road picket, village Kakuwal, at 12:30 PM. Sd/- Baljeet Singh, SI, Incharge, Police Post Kohrian, Police Station Dirba, dated 22.04.2024..."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case only on the basis of disclosure statement of co-accused. He further contends that the quantity of recovered contraband i.e. 2 kgs 500 grams of opium and 10 kgs of poppy husk is non-commercial in nature. It has been further contended that nothing has been recovered from the present petitioner as whatever recovery was

effected that was from the offending vehicle bearing registration No.PB-10HV-6279, which was being driven by co-accused Ram Lal. It has been further contended that the petitioner 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 petitioner was nominated as an accused in the instant FIR on the basis of disclosure statement of main accused Ram Lal and Jeewan Singh and contraband recovered i.e. 2.5 kg of opium is commercial in nature.

4. Analysis

Be that as it may, considering the custody period i.e. 10 months and 26 days for which the petitioner has suffered sufficient incarceration and is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused; the quantity of recovered contraband i.e. 2 kgs 500 grams of opium is though commercial and 10 kgs of poppy husk non-commercial in nature. Considering the fact that investigation is complete, challan stands presented to Court on 18.06.2024, charges have been framed on 07.08.2024 and out of total 25 prosecution witnesses none has been examined 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.

28.03.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No