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2025:PHHC:062224



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17187-2025
DECIDED ON: 12.05.2025

SUKHDEV SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 45 dated 20.04.2024 registered under Sections 23/25/27(A)/29 of NDPS Act, 1985 at Police Station Bhindi Saidan, District Amritsar, charges have been framed under Sections 23/27-A/29 of NDPS Act.

2. Facts

Facts as narrated in the FIR reads as under:-

“The Station House Officer, Police Station Bhindi Saidan, Jai Hind, Today I, SI alongwith ASI Ranjit Singh 116, Senior Constable Satnam Singh 548, Senior Constable Bagga Singh 551, Senior Constable Kartar Singh 553, PHG Ajit Kumar 3329 riding on private vehicle were going to village Jasraur, Awan Wasau, Ghoga etc. in connection with patrolling and search of bad elements, then an information received from Gurdaspur Branch that in the last one week, smuggling has taken place through drone on the land adjoining village Sahowal, Ballarwal, Dugg Toot, Ghogga. As per secret

information, Sukhdev Singh son of Surjit Singh resident of Kotla Suraj Lohar alongwith his companions Kulwinder Singh son of Santokh Singh resident of village Samrai, District Gurdaspur, Gurnam Singh son of Jaswant Singh resident of Ballarwal, Police Station Ajnala in connivance with each other are doing smuggling, and on 18-04-2024, they have also ordered large consignment of heroin by drone at village Sahowal. If you make interrogation after arresting these three persons, then large amounts of heroin or sale money of heroin can be recovered from them. On finding this information as solid and firm I, SI alongwith fellow employees raided the village of Kotla Suraj Lohar, where a young man of dark complexion, health, body, who was standing near the Scorpio car number PB69 C9854, started running after seeing the police party, then I, SI With the help of fellow employees apprehended the abovesaid young man and inquired his name and address, who on asking told his name as Sukhdev Singh son of Surjit Singh, resident of Kotla Suraj Blacksmith Police Station, Bhindi Saidan. I, SI conducted his search as per rules. After taking the mobile phone brand Realme carried by the abovesaid persons Surjit Singh was checked and the WhatsApp of his mobile phone number 62847-59945 was being operated by the said person whose call history was checked and the virtual number from the said person +971529940067 on which the conversation had been done till dated 18-04-2024 On being asked strictly, the said person got recorded his disclosure statement "that on 18-04-2024 I went to village Sahowal with my near/distant relative where I ordered two kilos of heroin, after talking to the smuggler Bhullar of Pakistan with the virtual number +971529940067. My association with Bhullar was got arranged by my brother Kulwinder Singh son of Santokh Singh resident of village Samrai district Gurdaspur, thereafter, I was was in constant contact with Bhullar. Whenever I used to order any consignment of drugs then Kulwinder Singh son of Santokh Singh resident of village Samrai, District Gurdaspur used to order it from my phone number. On 18.04.2024 in the late at night after we picked up the consignment, we three went to village Fattewal, and on 19-04-2024 Kulwinder Singh had taken my said Scorpio vehicle Number PB69C-9854 to Ajnala, and he came after giving 2 kgs consignment to some one, and on return he had brought lot of money in an envelope, out of which Kulwinder gave Rs.40/40 thousand to me and abovesaid Gurnam Singh each, and we went to our respective houses and the remaining sale amount was taken away by Kulwinder Singh. Today on

20.04.2024 Kulwinder Singh had met at Ajnala who told me that he was going out of station for some urgent work, if I ask you for money then you come after taking money in the black envelope which is kept on the backside of almirah placed in the bedroom of my house. That, I can get the money recovered by going with you and demarcate the house of Kulwinder Singh, and out of the rupees 40 thousand which I got, I have spent 30 thousand and the remaining 10 thousand rupees are in my pocket". Upon which, the personal search was carried out by me the SI as per rules, then rupees 10,000 were found in the right pocket of the pants he was wearing, which was taken in police possession through separate recovery memo and the mobile phone brand Realme and Scorpio car number PB69 C 9854 were also taken into police possession through separate memos. that the said persons along with his accomplices had committed an offence made out under section 23, 25, 27-A, 29-61-85 NDPS ACT by smuggling and selling heroin in coordination with the smugglers of Pakistan. Upon which, after writing a ruga is being sent to the police station through PHG Ajit Singh for the registration of case. After registration of case its file number be informed to me. After preparing the special reports be sent to the Illaqa Magistrate and senior officers and control room be informed accordingly. I, SI alongwith fellow employees busy at the spot for investigation. Today, in the area of village Kotla Suraj Lohar at 04.40 PM"

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 secret information and no recovery of contraband was effected from his conscious possession. He submits that apart from Rs.10,000/- nothing was recovered from the petitioner. He further submits that the alleged amount of Rs.1,00,000/- was recovered from the house of one Kulwinder Singh, co-accused. He contends that the petitioner is in the custody since 25.04.2025, wherein investigation is complete, challan stands presented and nothing is to be recovered from him.

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband i.e., 2 kg of *heroin* in the present case is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. Analysis

Considering the fact that the alleged contraband of 2 kg of heroin was not recovered from the petitioner and he has already suffered incarceration of 1 year, 15 days and is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 18.10.2024, charges are yet to be framed and total 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 “**Balwinder Singh versus State of Punjab and Another**”, **SLP (Crl.) No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would

infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. *It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:*

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

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

12.05.2025

Meenu

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