



226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-15101-2025  
DATE OF DECISION: 02.04.2025

GURPREET SINGH @ GORA ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.HPS Sidhu, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of Bharatiya Nagrik Suraksha Sanhita 2023 for grant of regular bail to the petitioner in FIR No. 25 dated 19.02.2024 under section 22 of Narcotics Drugs and Psychotropic Substances Act 1985 (Section 29 NDPS added later on) Police Station Kot Ise Khan, District Moga (Annexure P-1).

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

*‘Station House Officer, P.S. Kot Ise Khan. Fateh. Today I ASI alongwith HC Lakhvir Singh 1161, Moga. SC Gagandeep Singh 1244/M, CT Jaspreet Singh 548/M were going in a government vehicle TATA Sumo PB 130 6823 on Patrolling duty via village Balkhandi, Handiyala, Singhpura, Kot Ise Khan to Zira Road and were present near Bus stand Singhpura when the informer came and informed that Gurpreet Singh @Gopi son of Bhola singh and Bhinder Singh @Kulla son of Ranjit Singh*



*@Mukha resident of Randiyala are drug Addict and sell the drug and for that they even do snatching. Today they are sitting in the cremation ground outside the village Talwandi on Kot Ise Khan and they can be apprehended alongwith the heavy quantity of intoxicant Tablets. The information is reliable and act of the aforesaid accused falls under Section 22/61/85 of NDPS Act. Ruqa against Gurpreet Singh @Gopi and Bhinder Singh @Kulla is being sent through CT Jaspreet Singh 598/M to police station. I being ASI of local rank cannot investigate under NDPS Act therefore regular NGO be sent. PCR be informed and special report be issued. Sd/-Buta Singh ASI."*

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. He submits that as per the report of the FSL contents of 30 loose intoxicating tablets containing salt of Etizolam were claimed to have been recovered from the possession of the petitioner and upon calculation, the total weight of the tablets is found to be 3.99 grams whereas the commercial quantity starts from 2.5 grams which is marginally over and above from the commercial quantity. He further submits that the investigation in this case is complete as challan stands presented on 28.05.2024 charges stands framed on 12.08.2024 and out of 13 prosecution witnesses, none has been examined so far, meaning thereby, conclusion is trial is likely to take time, therefore, prays for grant of regular bail to the 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.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in one another FIR and the recovered tablets falls under the quantity of commercial category, therefore, rigorous of Section 37 of NDPS Act would be attracted.

#### 4. Analysis

Be that as it may, considering the custody period i.e. 1 year, 1 month and 10 days, for which the petitioner has suffered sufficient incarceration; the contraband recovered i.e. 30 loose intoxicating tablets containing salt of Etizolam is weighing 3.99 grams which is marginally over and above from the commercial quantity, in addition to the fact that the investigation is complete, challan stands presented on 28.05.2024 charges stands framed on 12.08.2024 and out of 13 prosecution witnesses, none has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022,



'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023.

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.

As far as 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 land the petitioner in a situation of denial of concession of bail.

5. DECISION:

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

02.04.2025  
anuradha

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