



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15555-2025
DECIDED ON: 03.04.2025

AVNINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivender, Advocate for
Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under Section 439 Criminal Procedure code 1973 seeking regular bail in FIR No.74 dated 11.3.2022 registered under Sections 15, 18, 20, 20-C, 25 and 29 Narcotic Drugs and Psychotropic Substances Act 1985 registered at Police Station Sahnewal, District Ludhiana.

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

“Station House Officer, Police Station Sahnewal District Ludhiana, Jai Hind. Today myself ASI along with XX Kumar No. 1276/ Ludhiana, ASI Amrik Singh 902/ Ludhiana, HC Lakhvir Kumar No.1308/ Ludhiana, Satinderpal Singh 3400/Ludhiana along with private laptop, printer and were on Bolero Car NO.PB10GK0572. Driver is ASI Kulwant Singh

2804/Ludhiana, were on patrolling and in search of bad elements. Special informer came and given information to me in separate that Avninder Snigh Maninder Singh son of DaljitSingh and Pushpinder Singh @ Bitu son of Harmal Singh resident of Village Khehra Tehsil Samala District Ludhiana, who have truck No. PCW 6731. Avninder Singh is driver of the truck and Pushpinder Singh @ Bitu is owner of the truck. Kuldeep Singh @Keepa son of Nachhattar Singh resident of Village Ladpur District Fatehgarh Sahib and Gurjit Singh son of Jaswant Singh resident of Village Chehlan District Fatehgarh Sahib who have truck No.PB23M5617. Kuldeep Singh @Keepa is the driver of the truck and Gurjit Singh is the owner of the truck, They are connived with the outer smugglers and used to supply Ganja, poppy, epium'etc, in the state of Punjab. Today, they are coming on trucks loaded with iron, scrap, sponge, iron gitti etc. They are also bringing the consignment of opium and poppy in truck No. PCW 6731 from the side of Khanna towards Ludhiana. If, the barricading is done at this place and the checking of the above said trucks is done, theabove said persons can be nabbed with Ganja, poppy and opium. The information is substantial and reliable. Therefore the accompanied employees have been informed about the information. Keeping in view the above said trucks, barricading has been done and started checking. While checking from the side of Doraha, one truck No.PB23M5617 came and it was stopped with the assistance of accompanied employees. The persons sitting on the driver and conduct seats were alighted from the truck and nabbed with the assistance of accompanied employees. The driver told his name as Kuldeep Singh @Keepa son of Nachhattar Singh resident of Village Ladpur District Fatehgarh Sahib and the person sitting on the conductor seat told his name as Gurjit Singh son of Jaswant Singh resident of Village Chehlan District Fatehgarh Sahib. In the meantime, truck No. PCW 6731 came and it was stopped with the assistance of accompanied employees. The persons sitting on the driver and conduct seats were alighted

from the truck and nabbed with the assistance of accompanied employees. The driver told his name as Avninder Singh @ Maninder Snigh son of Daljit Snigh resident of Village Khehra Tehsil Samala District Ludhiana. The person sitting on the conductor seat told his name as Pushpinder Singh-@-Bitu son of Harmal Singh resident of Village Khehra Tehsil Samala District Ludhiana. Then myself ASI made phone call from my phone No. 9915500414 to Harbinder Singh PPS, Assistant Commissioner of Police Detective Ludhiana at his mobile number 9915716423 and requested him to come present on the spot. Then Assistant Commissioner of Police reached on the spot and enquired about the names and address of nabbed persons. He informed them about his identity that he is Harbinder Singh PPS, Assistant Commissioner of Police Detective Ludhiana. He has doubt that there are some narcotic substance in your truck No.PB23M5617 and truck No, PCW 6731. I want to conduct search of your trucks. You have the legal right to get conduct the search of your trucks from any other Gazetted officer of any other department. He can be called on the spot or your trucks can be taken there before him. They have join said that they we have trust on you and you can conduct the search of our trucks. Their consent memo have been prepared and they have placed their signatures below the memo. Then. Assistant Commissioner of Police given direction to myself ASI to conduct the search of trucks accordingly. Then myself ASI with the assistance of accompanied employees conducted the search of truck No. PB23M5617 and truck No. PCW 6731. One plastic bag with weight lying under the tarpaulin on the tool box of truck No. PCW 6731 has been recovered. Myself ASI opened and checked it and poppy was lying therein. Myself ASI weighed it with electronic weigh scale and I was 3 kilogram. Separate parcel thereof has been prepared. The tarpaulin lying on the truck form the backside (dalla side) of the truck was taken aside and saw that 8 plastic bags were lying on the sponge,

iron gitti in the truck and one polythene was lying under the plastic bags. When these were alighted from the truck and found packets duly taped from the plastic bag and when the packet were opened and checked, Ganja and opium have been recovered. Packets were opened, placed in the plastic bag and weighed 8 bags by myself ASI on the electronic scale, these were 18/18 kilogram and three plastic bags containing Ganja was 20/20 kilogram. Total weight was 2 quintal 4 kilograms. & plastic bags of 18/18 kilogram and three plastic bags was 20/20 kilogram were marked from A to K. The emptied taped plastic envelope and emptied plastic bags which were total 8 bags, have been placed into 2 plastic bags and separate parcel thereof have been prepared. The recovered opium was weighed and it was 500 gram. The polythene envelope was put into a plastic bag and Separate parcel thereof has been prepared. The recovered poppy, 11 plastic bags, Ganja, emptied taped envelop, 2 plastic bags and 8 plastic bags have been placed in to other plastic bag and prepared parcel. The recovered parcels have been sealed by Assistant Commissioner of Police with his stamp SH and myself ASI has sealed the same with my stamp AS. Assistant Commissioner of Police has attested the case recovery. Sample of seal was separately prepared. Stamp after its use was handed over to Ashok Kumar 1276/Ludhiana. Poppy weighed 3 kilogram, plastic bags of Ganja weight 18/18 kilogram, three plastic bags weight 20/20 kilogram have been marked from A to K. The parcel of taped plastic envelope, one emptied plastic bag, total 8 parcels and one parcel containing 500 gram opium and all are sealed with stamps HS and AS have been taken into police custody through separate memo as proof of evidence. Memo has been signed by the witnesses. Therefore, Avninder Singh @ Maninder Singh, Pushpinder Singh @ Bitu, Kuldeep Singh @ Keepa and Gurjit Singh are connived with the smugglers and kept in their possession, poppy, ganja and opium and have committed offence Under Section 20C/25/29/61/85 NDPS ACT. Upon this

FIR has been registered against the above said persons under the above said offences.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that co-accused Pushpinder Singh @ Bittu was admitted to regular bail by this Court vide order dated 04.07.2024 passed in CRM-M-26894-2024, who unfortunately passed away thereafter and proceedings against him stands abated. It is worth noticing that the co-accused Pushpinder Singh @ Bittu was the owner of the offending truck in which the alleged contraband i.e. 2 quintals of ganja, 3 kgs of poppy husk and 500 grams of opium, was being transported on which the petitioner was employed as a driver by him. 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 alleged contraband was recovered from the offending truck which was being driven by the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 03 years and 17 days for which the petitioner has suffered incarceration; co-accused Pushpinder Singh @ Bittu was admitted to regular bail by this Court vide order dated 04.07.2024 passed in CRM-M-26894-2024, who was the owner of offending truck, wherein the petitioner was only an employee of the said

Pushpinder Singh @ Bittu and 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 28.07.2022, charges have been framed on 19.09.2022 and out of total 25 prosecution witnesses only 05 witnesses have 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.

(SANDEEP MOUDGIL)
JUDGE

03.04.2025

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No