

2025.PHHC:046206



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

**CRM-M-17322-2025
DECIDED ON: 04.04.2025**

DALER KUMAR ALIAS MASSU**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

The jurisdiction of this Court under Section 483 BNSS, has been invoked for the 2nd time for grant of regular bail to the petitioner in case F.I.R. No. 73 dated 08.10.2023 under Section 22 (C), 27-A, 29 of NDPS Act, 1985 Police Station Ghuman Kalan, and District Gurdaspur Punjab. (Offence U/s 29 of NDPS Act added later on).

2. Facts

Facts as narrated in the FIR reads as under:-

“Today I, SI along with ASI Nirmal Singh 39, ASI Sulakhan Singh 89/Gurdaspur CT Manbir Singh 120/ Gurdaspur were patrolling in our private vehicles in search bad elements and were going from police station to village Sahari, Masana, Bhojraj etc. When police party during patrolling went near Bhojraj from village

Masana, from the side of village Bhojraj one man was seen, carrying in his right hand one black polythene bag, going to the side of village Masaana road, who on seeing police party got confused and attempted to throw the black coloured polythene bag in the rice field. I, SI apprehended him with the help of my colleagues and enquired about his whereabouts (name, addresses etc) who disclosed his name as Daler Kumar alias Massu S/o Buta Ram r/o Bhojraj. Before checking of the plastic envelope which he carried in his right hand, we tried joining public witness to be a part of this search, but due to their personal reasons nobody joined as public witness in the search by police party of above accused. Upon which I, SI in front of my colleagues checked the plastic envelope which was in the right hand of Daler Kumar abovementioned, in which a recovery of loose white coloured intoxicating tablets was made and on counting them, it came about 4500 intoxicating tablets. Recovered intoxicating tablets along with plastic envelope were put in a plastic box and parcel was prepared and sealed with stamp SS/1 and was taken in police possession vide separate memo. On further personal search (Jamatalasi) of accused, Daler Kumar from his wearing apparel i.e from the right pocket of his Capri, recovery of 20 notes of denomination Rs. 500/500, 38 notes of denomination Rs 200/200, 2 notes of denominations Rs 100/100 total Rs.17,800/- Indian currency were made and regarding which the accused Daler Kumar abovementioned told that this was drug money collected after selling the intoxicating tablets. The above mentioned recovered Indian currency was put in a separate plastic container and parcel was prepared, which was sealed with stamp SS and taken into police possession. The seal after use was handed over to ASI Nirmal Singh 39/ Gurdaspur. Since it was chance recovery, for this reason no Gazetted office was called at the spot. The accused Daler Kumar abovementioned by keeping in his possession 4500 intoxicant tablets and Rs. 17,800/- Indian currency drug money, has

committed an offence U/s 22C, 27A, 61 of NDPS Act, 1985. So ruqa is written and sent dasti via CT Manbir Singh 120 to the P.S for registration of FIR and Special Reports to be prepared. Control Room shall be informed via wireless. I, SI along with my colleagues is busy at the spot conducting investigation”

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 and recovery of alleged contraband i.e., 4500 loose white coloured intoxicant tablets was not recovered from the possession of the petitioner. He further argued that the petitioner is in custody since 11.10.2023, wherein investigation is complete, challan stands presented and nothing is to be recovered from 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. According to which, the petitioner is behind bars for 1 year 5 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery 4500 loose white coloured tablets alongwith the drug money of Rs.17,800/- was effected from the petitioner. Additionally he submits that the petitioner is a habitual offender, as he is involved in other case as well.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 1 year, 5 months and 26 days added with the fact that investigation is complete, challan stands presented on 05.04.2024, charges have been framed on 02.05.2024 and out of total 12 prosecution witnesses, 4 have 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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

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

04.04.2025

Meenu

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