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

CRM-M-17798-2025

DATE OF DECISION: 07.04.2025

PRINCE MASIH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parivartan Singh, Advocate for the petitioner(s).

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

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

This petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) with a prayer for grant of regular bail to the petitioner in case FIR No.94, Dated 27.09.2024, under section 21 (B), 27(A) of N.D.P.S. ACT 1985, registered at Police station Kalanaur, District Gurdaspur, Punjab. (Annexure P-1)

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

*‘The SHO, Police Station Kalanaur "Jai Hind" Today, I, ASI Sanjeev Kumar, along with ASI Harjinder Singh (576 / G * u :) ASI Rajan Kumar (441 / H * C) and HC. Sucha Singh (283 / G * u :) were patrolling in government vehicle number PB-65-BG-9179, driven by HC. Sukhdev Singh (541 / G * uz) We were proceeding from Police Station Dana Mandi, Bhangwa, towards Kushipur and other areas as part of a patrol to search*



for anti-social elements. While patrolling, the police party reached near Akash Colony on Batala Road, Kalanaur, when two young men riding a motorcycle (number PB-06-U-9449, Hero Honda Splendor, black and white) came onto the main road from the direction of Akash Colony. Upon noticing the police party, the pillion rider took a polythene bag out of his pocket and attempted to discard it using his right hand. I, ASI Sanjeev Kumar, with the assistance of my team, apprehended both individuals on suspicion. Upon questioning, the pillion rider identified himself as Prince Masih, son of Manga Masih, a resident of Dargabad, Police Station Kotli Surat Mallian. The motorcycle driver identified himself as Inderas Masih, son of Ajad Masih, also a resident of Village Dargabad, Police Station Kotli Surat Mallian. The polythene bag, which the accused Prince Masih attempted to throw away, was recovered. Before checking its contents, I attempted to involve members of the public as witnesses, but none agreed to join, citing various personal reasons, and left the spot. In the presence of my team, I opened the recovered polythene bag and found a substance resembling heroin. Using a computerized scale from my investigation kit, I weighed the substance and found it to be 25 grams, including the weight of the polythene bag. The heroin, along with the bag, was placed in a cloth parcel, sealed with my seal marked "S.K." Additionally, four ₹500 currency notes, totaling ₹2,000, were recovered from the right pocket of Prince Masih's pants. The accused disclosed that this money was obtained through the sale of heroin. The recovered currency was placed in a paper envelope, sealed with my seal "S.K.," and a separate parcel was prepared. Both parcels were taken into police possession through separate memos, and a sample seal was prepared. After using the seal, it was handed over to ASI Harjinder Singh 576/Gu:. The motorcycle number PB-06-U-9449, Hero Honda Splendor, black and white was also seized and taken into police possession through a separate memo. Due



to the sudden recovery of the contraband, a gazetted officer could not be called to the spot. The accused, Prince Masih and Inderas Masih, were found in possession of 25 grams of heroin and 2,000 in drug money, thereby committing offenses punishable under Sections 21(b), 27(A), and 61-85 of the NDPS Act. A ruqa was prepared by ASI Rajan Kumar (441/Gu:) and sent to the police station for registration of the case. After the case is registered, the case number will be obtained, and a special report will be sent to senior officers. Control was informed via email/wireless. I, ASI Sanjeev Kumar, am continuing the investigation with my team at the spot. Sd/- Sanjeev Kumar ASI, Police Station Kalanaur. Dated: 27.09.2024.'

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 allegations, a small quantity i.e. 25 grams of Heroin and Rs. 2000/- drug money has allegedly been recovered from a polythene bag which the petitioner along with co-accused attempted to discard. He further submits that chances of false implication cannot be ruled out, moreso, nothing is to be recovered from the petitioner. He contends that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender. It is his further contention that the investigation in this case is complete as challan stands presented on 21.03.2025 charges are yet to be framed and 11 PWs are cited by the prosecution to be examined which is sufficient to infer



that the conclusion of trial is likely to take considerable 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 25 grams of Heroin and Rs. 2000 drug money was recovered from him.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 6 months and 7 days, nothing is to be recovered from the petitioner and the recovery effected from the petitioner i.e. 25 grams of Heroin falls within the category of 'small quantity', also antecedents of the petitioner are clean and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 21.03.2025, charges are yet to be framed and 11 PWs are cited by the prosecution to be examined which is sufficient to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

07.04.2025
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No