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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18026-2025
DATE OF DECISION: 07.04.2025

SHINDA SINGH ..PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Sandhu, 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 BNSS of 2023 for the grant of Regular Bail to the petitioner in FIR No.83, dated 11.08.2023, Under Section 22(c) of N.D.P.S. Act 1985, registered at Police station Sadar Malout District Sri Muktsar Sahib Punjab.

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

‘Station House Officer Police Station SadarMalout "Fateh" today myself SI along with Constable Ramandeep Kumar No. 400/SMS and PHG Rajinder Prasad No. 23435 was riding in a government vehicle Scorpio No. PB-30Y-0863, whose driver is Constable Avninder Singh No. 105/SMS and the government vehicle has the facility to operate a laptop and printer, the laptop and printer are operated by Constable Ramandeep Kumar No. 400/SMS.a private laptop. printer and a search bag were taken for patrolling and checking of suspicious persons and were going to village Virk Kheran etc. from village



Malout via GT Road Malout-Sri Muktsar Sahib via Bye Pass Fazilka Road. When the police party reached near the area of village Malcut, about 600 meters ahead of GT Road Malout-Sri Muktsar Sahib Road, Point Dhani Hazura Singh, a young hindu gentleman was seen near the room on the north side of the road holding a plastic envelope in his hand and searching something in that. Who after seeing the police party, he got scared and started walking fast towards Dhani Hazura Singh Side Pakki. Then myself SI, on the basis of suspicion, quickly stopped the vehicle and controlled the young hindu gentlemen and asked. his name and address. Who disclosed his name as Shinda Singh, son of Bhajan Singh, son of Babu Singh, resident of village Jhozad. Who was holding a transparent plastic envelope in his right hand, in which strips of pills were visible, myself SI told the said Shinda Singh that "My name is Lakhwinder Singh and my rank is Sub Inspector and I am posted as Additional Station House Officer at Sadar Malout Police Station. I suspect that the transparent white plastic envelope you are holding in your right hand may contain narcotic pills. Therefore, you and the plastic envelope in your possession have to be searched. But as per the law you have the right to get yourself and the plastic envelope in your possession searched by any Magistrate or Gazetted Officer. Who can be called on the spot or you can be taken to them. To which the above said Shinda Singh said that "You are present on the spot and you can search me and the plastic envelope in my possession. I do not want to be searched on the spot by any Magistrate or Gazetted Officer. I have full trust on you." On which a memo of consent notice under section 50 (1) NDPS ACT was prepared. The above said accused Shinda Singh appended his signature in Punjabi on memo of consent notice, Constable Avninder Singh No. 105/SMS and Constable Ramandeep Kumar No. 400/SMS as witnesses gave their testimony, then myself SI before the search of the plastic envelope of transparent color white in the possession of the above said accused Shinda Singh, made every possible effort to include the witness from the public, but no one was ready, then myself SI checked the plastic envelope of transparent color white



in the possession of the above said accused Shinda Singh, then from it 05 strips of narcotic pills 10/10 pills in each strips total 50 narcotic pills make Etirelax- 0.5 Etizolam Tablets 0.50mg and Batch. No MFG Date and EXPIRY Date of all strips are erased with blue colored substance and was recovered. The recovered narcotic pills were put in the same transparent plastic envelope and put in a cloth bag and prepared a parcel, sealed the parcel with my seal initials L.S. A sample seal was prepared separately. After affixation of the stamp was handed over to Constable Avninder Singh No. 105/SMS and the above said parcel along with the sample stamp were taken into police custody via memo of recovery. Constable Avninder Singh No. 105/SMS and Constable Ramandeep Kumar No. 400/SMS gave their testimony as witnesses on the memo. Then myself SI conducted the personal search of the above said accused Shinda Singh, then no cash or any valuable thing was recovered from him. On which a separate memo of recovery and memo of personal search were prepared. The above said accused Shinda Singh appended his signature in Punjabi on memo and Constable Avninder Singh No. 105/SMS and Constable Ramandeep Kumar No. 400/SMS gave their testimony as witnesses on memo. On questioning by myself SI, the above said accused Shinda Singh could not able to present any permit, license or bill etc. regarding keeping the narcotics pills in his possession. On which accused Shinda Singh has committed the offence punishable under Section 22C/61/85 NDPS ACT by keeping 50 narcotic pills in his possession. On which, the complaint against Shinda Singh, son of Bhajan Singh, son of Babu Singh, resident of village Jhorad, has been typed in a laptop and a printout has been taken out and handed over to PHG Rajinder Prashad No. 23435 and is being sent to the Police Station for registration of case. The case should be registered and the case number should be informed. The special reports should be sent to the service of the above said accused Shinda Singh, then no cash or any valuable thing was recovered from him. On which a separate memo of recovery and memo of personal search were prepared. The above said accused Shinda Singh appended his signature in Punjabi on



memo and Constable Avninder Singh No. 105/SMS and Constable Ramandeep Kumar No. 400/SMS gave their testimony as witnesses on memo. On questioning by myself SI, the above said accused Shinda Singh could not able to present any permit, license or bill etc. regarding keeping the narcotics pills in his possession. On which accused Shinda Singh has committed the offences punishable under Section 22C/61/85NDPS ACT by keeping 50 narcotic pills in his possession. On which, the complaint against Shinda Singh, son of Bhajan Singh, son of Babu Singh, resident of village Jhorad, has been typed in a laptop and a printout has been taken out and handed over to PHG Rajinder Prashad No. 23435 and is being sent to the Police Station for registration of case. The case should be registered and the case number should be informed. The special reports should be sent to the service of the Hon'ble Area Magistrate and the officers. I/C PCR/SMS should be informed through W/M. Myself SI along with fellow officials indulged in the investigation on the spot. SD/- Lakhwinder Singh SI, Police Station, Sadar Malout, Date 11.08.2023, Place Area Village Malout AT: 5:30 PM. Today at Police Station:-on receipt of the above said complaint in the Police Station and a case has been registered in CCTNS against the above mentioned accused for the above mentioned crime. A copy of the FIR along with original complaint handed over to PHG and is being sent to the SI on the spot. Special reports handed over to S.C. Jagmeet Singh No. 629/SMS and are being sent to the service of Hon'ble Area Magistrate and officers. I/C PCR/SMS is being informed.'

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 he has not committed any offence as alleged in the present FIR. He submits that the alleged recovery i.e. 50 tablets of Etirelax-0.5 was effected from a transparent bag and not from the conscious possession of the petitioner,



therefore, possibility of false implication cannot be ruled out. Moreso, the investigation in this case is complete as challan stands presented on 28.11.2023 charges stands framed on 25.01.2024 out of 22 prosecution witnesses, only 2 PWs have been examined so far 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 the petitioner is a habitual offender as he is involved in other FIRs also but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 7 months and 22 days, the alleged recovery has been effected from a polythene bag 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 28.11.2023 charges stands framed on 25.01.2024 out of 22 prosecution witnesses, only 2 PWs have been examined so far 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.

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 the concession of bail.

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