



235

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17986-2025

DATE OF DECISION: 07.04.2025

PANKAJ PAL

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Gill, Advocate
for the petitioner.

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

This petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in FIR No.332 dated 25.7.2024, under Section 22(C) NDPS Act, 1985 (Later on section 29 NDPS Act, 1985 was added), Police Station Pinjore, District Panchkula.

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

“Sir, copy of ruqa is as under: To, the SHO, Police Station Pinjore, District Panchkula, Jai Hind! Sir, it is submitted that today i.e. on 25.07.2024 I, ASI Anil Kumar No.46/Panchkula was present at Anti Narcotic Cell, Panchkula, in the meantime secret informant came present at Anti Narcotic Cell, Panchkula at about 02.00 P.M. and gave information that Sanjay Kumar, resident of Kalka, who deals in selling of intoxicant tablets nearby the areas of Kalka-Pinjore. Today about 3.30 P.M. he



has to come near White House, Pinjore to supply the intoxicant tablets to someone. If I deploy my employees in civil dress near White House, Pinjore then Sanjay Kumar can be apprehended along with intoxicant tablets. The information being reliable and trustworthy, I, ASI shared the secret information with Incharge, Anti Narcotic Cell, Panchkula and in this regard report was entered in Roznamcha Anti Narcotic Cell, Panchkula and raiding party was constituted. On receipt of information regarding intoxicant tablets notice under section 42 NDPS Act was prepared and information was sent to Sh. Joginder Sharma, HPS/ACP Kalka by hand through HC Jaswinder Singh No.159/Panchkula Anti Narcotic Cell, Panchkula at about 3.15 P.M. I, ASI shared the secret information with ASI Anil Kumar No.46/PKL, ASI Raman Kumar No.89/PKL, ASI Parvinder Singh No.86/PKL, constituted the raiding party in civil dress, at about 2.00 PM left White House, Pinjore and made entry in roznamcha, boarded in Govt. vehicle bearing registration No.HR-03GV-8365 being driven by Vikrant (Skill Employment Scheme) with secret informant, laptop, printer and investigating bag. I, ASI along with companions and secret informant while riding Govt. vehicle reached at about 2.45 PM nearby White House, Pinjore. The Govt. vehicle was parked aside and I along with companions were standing nearby White House, Pinjore, in the meantime secret informant suddenly told me ASI that the pedestrian who is coming from the side of Kalka and wearing blue coloured pajama and pink coloured T-shirt, he is Sanjay. Upon this, I, ASI discharged the secret informant immediately. I along with companions cordon off and apprehend that person at about 3.15 PM. I disclosed my identity to him and asked his name and address. He disclosed his name as Sanjay Kumar son of Harbans Lal, resident of House No. 188/1, Near Punjabi Dhaba, Railway Road, Kalka, aged about 52 years. Upon this,



I, ASI disclosed the apprehended person Sanjay Kumar that there is secret information regarding having intoxicant tablets with you and in this regard search is to be conducted upon you. You are legally entitled to get yourself searched in the presence of any Gazetted Officer or Magistrate. Whereon I, ASI prepared notice under section 50 NDPS Act separately, made aware and understood above mentioned Sanjay Kumar about his legal right and notice under Section 50 NDPS Act was served to him. Whereupon accused Sanjay Kumar gave his consent in writing that he wants to get himself searched in the presence of any Gazetted Officer. Consequently consent statement of above mentioned accused Sanjay Kumar prepared regarding his search. The consent statement was signed by above mentioned accused Sanjay Kumar and witnesses ASI Raman Kumar No.89/Panchkula and ASI Parvinder Singh 86/Panchkula. Thereafter, I, ASI made a call from my mobile No.94167-36600 to Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer NDPS Act, Panchkula on his mobile No.92161-74144 at about 3.25 P.M. after narrating the incident requested him to reach at the spot i.e. near White House, Pinjore. On receipt of secret information regarding the intoxicant tablets, I, ASI contacted Sh. Umesh Chander, Drug Inspector, Panchkula on his mobile No.7503156677 from my mobile No.9416736600 at about 3.27 PM, narrated the incident and requested him to reach at the spot i.e. near White House, Pinjore. HC Jaswinder Singh No.159/Panchkula Anti Narcotic after serving notice under Section 42 NDPS Act came present at the spot. At about 4.15 PM Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula came present at the spot i.e. White House, Pinjore in his Govt. vehicle along with his staff. Whereon I, ASI made aware Nodal Officer NDPS Act Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula and produced apprehended Sanjay Kumar before the Nodal officer. Sh. Ajay



Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula after knowing the circumstances disclosed his identity to above mentioned Sanjay Kumar that he Sh. Anjay Kumar is posted as AETO Panchkula, Nodal Officer, NDPS Act at Panchkula. The police are having secret information that you are having intoxicant tablets and hence search is NDPS Act, Panchkula on his mobile No.92161-74144 at about 3.25 P.M. after narrating the incident requested him to reach at the spot i.e. near White House, Pinjore. On receipt of secret information regarding the intoxicant tablets, I, ASI contacted Sh. Umesh Chander, Drug Inspector, Panchkula on his mobile No.7503156677 from my mobile No.9416736600 at about 3.27 PM, narrated the incident and requested him to reach at the spot i.e. near White House, Pinjore. HC Jaswinder Singh No.159/Panchkula Anti Narcotic after serving notice under Section 42 NDPS Act came present at the spot. At about 4.15 PM Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula came present at the spot i.e. White House, Pinjore in his Govt. vehicle along with his staff. Whereon I, ASI made aware Nodal Officer NDPS Act Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula and produced apprehended Sanjay Kumar before the Nodal officer. Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula after knowing the circumstances disclosed his identity to above mentioned Sanjay Kumar that he Sh. Anjay Kumar is posted as AETO Panchkula, Nodal Officer, NDPS Act at Panchkula. The police are having secret information that you are having intoxicant tablets and hence search is necessary to be conducted. You are legally entitled to get yourself searched in the presence of any Magistrate or some other Gazetted Officer. Whereupon above mentioned Sanjay Kumar told Sh. Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula that he has already given his consent in writing that he wants to get himself searched in the



presence of Gazetted Officer. I, ASI in the presence of above mentioned Nodal Officer NDPS-Act Sh. Ajay Kumar requested the passersby to join the investigation by narrating them the incident, all the passersby showed their inability and went away from the spot. In the meantime Sh. Umed Chander, Drugs Inspector, Panchkula came on the spot in his Govt. vehicle at about 4.35 P.M. Thereafter, I, ASI under the latest law handed over my mobile phone to H.C. Jasvinder Singh No.159/Panchkula Anti Narcotic and instructed him to record the video of personal search of above mentioned accused Sh. Sanjay Kumar. After that above mentioned Ajay Kumar, AETO Panchkula, Nodal Officer NDPS Act, Panchkula first of all conducted my personal search. During the search no intoxicant material was recovered from me except the necessary items. Thereafter, as per the order of Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula I, ASI conducted the personal search of companions one-by-one. During the search no intoxicant material was recovered from the companions except the necessary items. Upon this, personal search memo of companions was prepared separately. Memo was signed by witnesses and above mentioned accused Sanjay Kumar. As per the order and under the supervision of Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act, Panchkula I, ASI searched above mentioned Sanjay Kumar as per law. During the search, from the left pocket of blue coloured lower worn by above mentioned Sanjay Kumar one copy of notice under section 50 NDPS Act and one golden coloured mobile phone make REALMI recovered and from the right pocket some strips of green coloured tablets wrapped in transparent polythene recovered, which were taken out from the polythene in the presence of Nodal Officer, NDPS Act and green coloured strips



were counted which came to be 14 in numbers, out of which 13 strips were containing 60 tablets and 1 strip was containing 45 tables (total 825 tablets). The recovered strips of tablets were checked and Diphenoxylate Hydrochloride Atropine Sulphate Tablets IP Lomotil was written over the tablets, all the tablets were 2.5 mg having Batch No.03L24011 MFG 03/2024 and EXP.02/2027. I, ASI submitted a written application to Sh. Umed Chander, Drugs Controller regarding obtaining his opinion about the Lomotil tablets. Upon this, Sh. Umed Chander, Drugs Controller took out 05 tablets out of one strip of recovered Lomotil tablets and weight the same after taking weight and scale from me ASI the total weight of same came to be 0.33 miligram and total weight of 825 Lmotil intoxicant tablets came to be 54 Grams 45 miligrams. The 05 tablets taken out from the strip was put in the strip after weighing and strip was closed with cello tape. He submitted his written opinion to me ASI that the Lomotil tablets falls under the head of commercial quantity of NDPS Act. Thereupon I, ASI separately prepared the memo of identification of intoxicant Lomotil tablets. After giving in writing the opinion Sh. Umesh Chander, Drugs Inspector, Panchkula left from the spot at about 5.00 P.M. in his Govt. vehicle. I, ASI asked above mentioned Sanjay Kumar to produce any licence or permit for keeping in his possession 825 intoxicant tablets of Lomotil but he could not produce any license or permit. Whereupon I, ASI put the recovered 14 strips total 825 intoxicant tablets of Lomotil in the same polythene envelope. Thereafter put in white coloured cloth bag, converted into parcel and sealed the same with my seal bearing letters AK/3. Sample seal was prepared separately. After use, seal was handed over to ASI Raman Kumar 89/Panchkula. Sh. Ajay Kumar, AETO Panchkula, Nodal officer, NDPS Act, Panchkula served the samples with his seal bearing letters AK/1 and separately



affixed his seal AK/1 on sample seals. After use, Sh. Ajay Kumar, AETO Panchkula, Nodal officer, NDPS Act, Panchkula kept his seal with himself. I, ASI took in police possession the parcel of 14 strips of intoxicant tablets Lomotil (Total 825 tablets), notice under section 50 NDPS Act and mobile phone as a piece of evidence. Recovery memo of 14 strips of intoxicant tablets Lomotil (Total 825 tablets), notice under section 50 NDPS Act and mobile phone make REALMI colour golden was prepared separately. Printouts of all the memos were taken on the spot and thereafter signatures of above mentioned accused Sanjay Kumar and witnesses were obtained and all the memos, parcel and sample seals were attested by Sh. Ajay Kumar, AETO, Panchkula, Nodal Officer, NDPS Act. After giving appropriate directions Sh. Ajay Kumar AETO, Panchkula, Nodal Officer, NDPS Act left from the spot in his Govt. vehicle at about 5.20 PM. Above mentioned accused Sanjay Kumar has committed an offence under section 22-C NDPS Act by keeping 14 strips total 825 intoxicant tablets of Lomotil in his possession without any license or permit. Ruqa has been written and same is being sent to the police station Pinjore by hand through ASI Parvinder Singh 86/Panchkula. After registration of case I may be intimated case number. Copies of First Information be sent through e-mail to senior officers as special report. I, ASI am a complainant in the above mentioned case. Senior officers were requested on telephone to send another investigating officer at the spot for further investigation. All the documents of above mentioned proceedings were prepared by ASI Parvinder Singh 86/Panchkula on my instructions. I, ASI along with witnesses, above mentioned accused Sanjay Kumar and case property am waiting at the spot for another investigating officer. At:- Near White Castle Pinjore, Latittude 30.808526 Longitude: 76.916245 (ASI Anil Kumar 46/Panchkula) Anti Narcotic Cell,



Panchkula dated 25.07.2024 at: 5.50 P.M....”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is a chemist. He submits that as per the allegations, the alleged recovery i.e. 825 tablets of LOMOTIL (weighing 54.45 grams having Diphenoxylate Hydrochloride and Atropine Sulphate salt) which is marginally higher than the commercial quantity, was effected from the petitioner. Moreover, the investigation in this case is complete as challan stands presented on 12.11.2024 charges stands framed on 23.12.2024 out of 23 prosecution witnesses, none has 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 has produced the custody certificate of the petitioner today in Court, 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 was having 825 tablets of LOMOTIL (weighing 54.45 grams having Diphenoxylate Hydrochloride and Atropine Sulphate salt), however, he is not in a position to controvert the submissions made by 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. 08 months and 6 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual



offender, 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 12.11.2024 charges stands framed on 23.12.2024 out of 23 prosecution witnesses, none has 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.

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.

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.

07.04.2025

anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No