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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17980-2025
DATE OF DECISION: 07.04.2025

JAI BHAGWAN @ DIMPLE ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.S.S. Gill, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in FIR No.249 dated 6.6.2024, Under Section 22C NDPS Act, 1985 (Later on added Section 29 NDPS Act, 1985), Police Station Chandimandir, District Panchkula.

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

't is submitted that today i.e. 06.06.2024 I, ASI Kumar No.3/Panchkula, Detective Staff, Sandeep Panchkula along with ASI Pardeep Kumar No.110/Panchkula, ASI Vikrant No.107/Panchkula, HC Sayyad Khan No.87/Panchkula, HC Jasvinder Sinth No.159/Panchkula with laptop, printer and investigating bag were riding Govt. vehicle bearing registration No.HR-03GV-1001 being driven by EHC Lakhmir Singh No.722/Panchkula, departure was entered in the Roznamcha of Detective Staff at about 4.30 PM and in connection with



prevention of crimes in District Panchkula were present in the market of Sector 27. In the meantime the secret informant met me at about 5.30 PM and gave information that Jaibhagwan @ Dimple, resident of Ramgarh, who is employed at Garg Chemist Shop, Ramgarh and supplies the huge quantity of intoxicant tablets. Today also he is standing at some distance from the shop and supplying the intoxicant tablets to the drug addicts. If I conduct a raid in civil dress then Jaibhagwan @ Dimple who is stand near Garg Chemist Shop, Ramgarh can be apprehended along with huge quantity of intoxicant tablets. The information being reliable and trustworthy was shared with the companions. I, ASI along with companions left for the spot. Notice under Section 42 regarding receiving the information of intoxicant tablets was prepared and handed over to Detective Staff, Panchkula for information by hand through HC Sayyad Khan No.87 Panchkula. At about 5.50 PM it is being sent to the office of Sh. Arvind Kamboj HPS/ACP, Crime Panchkula, Sector 14, Panchkula.'

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 the allegations, the alleged recovery i.e. 1260 tablets of LOMOTIL (weighing 83.60 grams having Diphenoxylate Hydrochloride salt) which is marginally higher than the commercial quantity, was effected from the petitioner. He contends that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender. He further submits that similarly situated co-accused namely Pramod Kumar has already been granted concession of regular bail by this Court vide order dated 20.03.2025 passed in CRM-M-



12750-2025 (Annexure-3). Moreso, the investigation in this case is complete as challan stands presented on 22.08.2024/31.01.2025 charges stands framed on 14.10.2024 out of 17 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 was caught red handed carrying 1260 tablets of LOMOTIL (weighing 83.60 grams having Diphenoxylate Hydrochloride 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. 10 months, similarly situated co-accused has already been granted concession of bail by this Court, 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 22.08.2024/31.01.2025 charges stands framed on 14.10.2024 out of 17 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.

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 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

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