



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20716-2024
DECIDED ON: 18.03.2025

AKASH SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akashdeep S. Sidhu, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 of Criminal Code of Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.0195 dated 09.07.2023, U/s 22 C, 22, 29 & 27 of NDPS and Section 411 of IPC registered at Police Station STF, Phase-4 District SAS Nagar (Mohali).

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

“File copy, The Chief Officer, Police Station STF, Phase-4, SAS Nagar, Sir, Today SI including L/HC Karamjit Kaur No.542/SAS N, Constable Jaspreet Singh No.685/4-IRB and Constable Gurnoor Partap Singh No.664/4-IRB along with Laptop, Printer in a private vehicle in connection with the search of drug smugglers, bad

persons by blocking GT Road Kurali to Ropar Road Near Baba Deep Singh Gurdwara Sahib Solakhia while checking the incoming vehicles it was around 9:00 PM that a car bearing No.HR-75-2400 make Ford Icon colour white was seen coming towards Kurali and Ropar, who tried to drive away the car with the help of his colleagues, he stopped the car from the left side and asked the name of the person sitting in the car. He told his name as Amarpreet Singh @ Pamma son of Ajit Singh, resident of village Kotla Nihang Police Station City Ropar District Ropar, the person sitting in the conductor seat gave his name as Arvinder Singh son of Manjit Singh resident of village Khabra police station Singh Bhagwantpura district Ropar and the person sitting in the back seat of the car gave his name as Akash Singh son of Darshan Singh resident of village Rangilpur police station Singh Bhagwantpura district Ropar. To whom SI asked the reason for driving the car rashly. The car driver told that there are drug injections in the dashboard of our car. We were going to sell narcotic injections to our customers. The person Amarpreet Singh @ Pamma, Arvinder Singh and Akash Singh above, having narcotic injections in their possession and selling the same to their customers fulfills the offense of Section 22 NDPS Act. S.I. written the Rukka, taken out the printout, he filed a case against Amarpreet Singh alias Pamma, Arvinder Singh and Akash Singh above and handed over the crime scene to the said Con. Jaspreet Singh No. 685/4-IRB, Police Station STF Phase-4 Mohali is sent and the case should be registered and the number should be informed on the file. The control room should be informed. Special reports should be issued. The Senior officers and instructions of the Hon'ble Supreme Court further investigation as per Tavibridge Udhni Datab but

a competent police officer should be sent. I am present along with the police party along with Man SI. Bahd:- Baba Deep Singh Gurudwara Sahib Solkhia near G-T Road Kurali and Ropar Road, At- 10.20 PM, m/ Ghalniu Sindh SI Sanghat 82/SAS N. Chata Bhen.T. Bhede Dam-4, Bhegli, Bhidi 08-07-2023. The completion stage is completed by registering the case against the accused Amarpreet Singh alias Pamma, Arvinder Singh and Akash Singh Uttan after the stay is over. Copies of the FIR are being sent to the service of the District Magistrate and officers. Senior officers and control room are being notified separately on Bajria phone. Original Rukka Arinda Sepoy Jaspreet Singh No. 685/4 with Misal Sukad- Nijad SI Amar Singh No. 909/Pt. Bar Peka is sent to the side Instructed the MHC police station to complete the record.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner argues that the 40 ampoules of intoxicating injections labeled PAKAVIL (10 ml each), containing Pheniramine Maleate, do not fall under the category of narcotic substances. Therefore, the case involves the recovery of 40 intoxicant injections of Buprenorphine from the dashboard of the offending vehicle bearing registration No. HR-75-2400 and the petitioner was seated in the rear seat of the said vehicle after having taken a lift from the owner as the case set forth by the prosecution as well.

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.

He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in two other cases. He further contends that the quantity of recovered contraband is commercial in nature.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 08 months and 07 days for which the petitioner has suffered incarceration; nothing has been recovered from the conscious possession of the petitioner and whatever recovery was effected that was from dashboard of the offending vehicle, wherein the petitioner had only taken lift from the co-accused persons in addition to the fact that investigation is complete, challan stands presented to Court on 05.12.2023, charges have been framed on 01.08.2024 and out of total 15 prosecution witnesses only two witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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.

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 concession of bail.

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him 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.

18.03.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*