



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

240

CRM-M-19382-2025

DATE OF DECISION: 22.04.2025

MUKESH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashan Sekhon, 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 439 Code of Criminal Procedure for grant of regular bail to petitioner in FIR No. 363 dated 28.12.2023 registered under section 21(b) (ii) (c) of the NDPS act in the Police Station: Sector 17/18, District Gurugram (Annexure P/1).

2. Brief facts of the case are that on 28.12.2023, Sub-Inspector Kimti Lal, while on routine patrolling duty along with accompanying police officials in a government vehicle bearing registration no. HR05GB4752 near Kataria Chowk, Gurugram, received credible secret information regarding the involvement of accused persons namely Ramesh, Rakesh, and Mukesh in the sale and possession of narcotic substances, specifically Ganja. It was informed



that the said individuals were present in front of Pasco Automobiles, situated on Old Delhi-Gurugram Road, in possession of the contraband, and could be apprehended in case of immediate action. Upon receiving the aforesaid information, SI Kimti Lal duly informed the accompanying officials, constituted a raiding party, and prepared a written notice under Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which was dispatched to Police Station Sector-17/18, Gurugram through Constable Manjeet. The police team thereafter proceeded to the indicated location, where an Eco van bearing registration number HR72H2275 was found parked. The informer identified the vehicle and confirmed that the accused persons were seated inside along with the contraband. Acting upon the same, SI Kimti Lal, with the assistance of his team, apprehended the three occupants. Two individuals, later identified as Mukesh and Ramesh, were seated on the rear seat with a white plastic bag placed between them. The third individual, Rakesh, was seated in the driver's seat. Notices under Section 50 of the NDPS Act were duly served upon the accused persons, informing them of their legal right to be searched in the presence of a Gazetted Officer or a Magistrate. The accused expressed their preference to be searched before a Gazetted Officer. Attempts were made to contact ETO Deepak, but the call went unanswered. Subsequently, a request was made to the Personal Assistant to the Deputy Commissioner, Gurugram, seeking appointment of a Duty Magistrate. In response, Mr. Sushil Kumar, Naib Tehsildar, Gurugram was appointed as Duty Magistrate. At approximately 06:20 PM, Constable Manjeet arrived at the location



along with a copy of the FIR and the Duty Magistrate. The Duty Magistrate was apprised of the facts and circumstances of the case. In compliance with procedural safeguards, he first conducted the personal search of SI Kimti Lal to rule out any planted evidence. Thereafter, on his directions, the personal search of the accused Ramesh, Rakesh, and Mukesh was conducted. From the white plastic bag located between Mukesh and Ramesh, a total of 23 kilograms and 310 grams of Ganja was recovered. The recovered contraband was converted into sealed parcels, bearing seal impression "KL" of the Investigating Officer and "TS" of the Duty Magistrate. Representative samples were also drawn and sealed accordingly. On the basis of this recovery and the statement of the complainant, a formal FIR was registered under the relevant provisions of the NDPS Act.

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the contraband involved in the instant FIR i.e. 23.310 Kg. Ganja is marginally over and above the commercial quantity. He further contends that he has been falsely implicated in the instant FIR on the concocted story of the police authorities without complying with Section 50 of NDPS Act. He has further argued that the antecedents of the petitioner are clean. Moreso, the investigation in this case is complete as challan stands presented on 28.05.2024 charges stands framed on 22.08.2024 out of 19 prosecution witnesses, 4 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 heavy quantity of contraband i.e. 23.310 Kg. Ganja which is commercial in nature has been recovered, therefore, prays for dismissal of the petition.

4. Analysis

Be that as it may, considering the custody period i.e. 1 year, 3 months and 21 days for which the petitioner has suffered incarceration; the contraband i.e. 23.310 Kg. Ganja, is marginally over and above the commercial quantity in addition to the fact that the investigation is complete, challan stands presented on 28.05.2024 charges stands framed on 22.08.2024 out of 19 prosecution witnesses, 4 PWs have been examined so far which is sufficient to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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. **RELIEF:**

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.

(SANDEEP MOUDGIL)
JUDGE

22.04.2025
anuradha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No