



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18942-2025
DECIDED ON: 21.04.2025

PAWAN KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Bhavdeep Singh Mamli, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.266 dated 21.07.2021 under Sections 21, 29, 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Model Town, District Panipat.

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

The contents of the FIR is as under: To SHO, Police Station Model Town, Panipat, Jai Hind, It is requested that today I, ASI along with HC Harpreet Singh 1067, in a vehicle, government number HR10AB-8762, whose driver is HC Rajeev Kumar 1310/KNL, reached the police station near Assandh, Panipat Road in search of drugs, when a special informer met I ASI and told him that Sandeep Singh

alias Sandy, son of Puran Singh, resident of Ward No.12, Safido, sells chitta/heroin. He has kept Amit Jagda, resident of Bhopal Jagda, resident of Sita Shyam Colony, Ward No. 9, Safidon, to supply chitta/heroin to drug addicts in Panipat. Amit Jagda has taken a room on rent in Shanti Nagar Colony. He sells chitta to drug addicts around the Shanti Nagar canal. If Amit Jagda is arrested and searched after conducting a raid around Indian Oil CNG Petrol Pump, a large quantity of chitta/heroin can be recovered from his possession. A notice under section 42 of NDPS Act has been prepared and sent to Model Town Police Station under HC Rajiv Kumar 1310. He was sent to Panipat. The ASI along with his companion reached the Indian Oil CNG petrol pump near Shanti Nagar and started surveillance. The ASI stopped the passersby and told them about the investigation. All of them expressed their legitimate compulsions and left the spot without revealing their names and addresses. After some time, a young boy was seen coming from the Shanti Nagar lane. On the indication of a special informer, with the help of a fellow employee, he was caught and on asking his name and address, the young boy told his name as Amit Jagda son of Bhopal Jagda resident of Sita Shyam Colony Ward No. 9 Safido, currently a tenant in Shanti Nagar, Panipat. At the same time, HC Rajeev Kumar arrived from Model Town Police Station, Panipat to register a report 1310/KNL under Section 42 NDPS Act. The ASI informed the accused Amit Jagda son of Bhopal resident of Sita Shyam Colony Ward No. 9 Safido District Jind, currently a tenant in Shanti Nagar Colony, Panipat, that I suspect that you have chitta/heroin in your possession. Your personal search has to be conducted. You have the legal right to get yourself searched in front of a magistrate or a gazetted officer. Notice under Section 50 NDPS Act was prepared. On which the accused and the witnesses signed. After some time, accused Amit Jagda, after thinking for a while, said that he wanted to be searched in front of a gazetted officer. On which a consent notice under section 50 of NDPS Act was prepared. On which the

accused and the witness signed. The ASI called Dr. Krishna Kumar Principal III Panipat on mobile no. 7700000899 from mobile no. 98139-16907 and requested him to come to the spot after narrating the circumstances of the case. After some time, Dr. Krishna Kumar Principal III Panipat arrived at the spot. The ASI explained the circumstances of the case again in detail to the Principal. The Principal sahab interrogated the above accused Amit Jagda and signed both the notices under section 50 of NDPS Act. After that, the Principal sahab searched the ASI in relation to the narcotic substance. During the search, no narcotic substance was recovered from the possession of the ASI. After that, as per the order of Dr. Krishna Kumar Principal III, Panipat, the ASI was ordered to search the accused. Which was the Principal's As per the order, ASI conducted a personal search of the above mentioned accused Amit Jagda. During the search, a transparent polythene was recovered from the right pocket of the colourful grey shorts worn by the above mentioned accused Amit Jagda. On opening and checking the polythene, a brown coloured substance was recovered from inside it. It happened. Which was found to be Chitta/Heroin as per my experience. On my asking Amit above also told that it was Chitta/Heroin. The weight of the verandah Chitta/Heroin along with the polythene was found to be 20 grams with the digital computer weighing scale present in the vehicle. The Chitta/Heroin along with the polythene was put in a cloth bag and a Palanda was prepared and it was stamped with his seal SS/2 and a sample seal was prepared and a stamp of his SS was put on it. After the seal, the experiment was handed over to HC Rajiv Kumar 1310/KNL. Principal sahab also stamped the Palanda Chitta/Heroin with his seal KS/ 1 and put his KS seal on the sample seal. After the seal, the experiment was kept with himself. Principal sahab attested the Palanda Chitta/Heroin. The verandah Palanda Chitta/Heroin was taken into police custody by the person as evidence. The accused and the witness signed the report. The Principal

attested the recovery report. The above mentioned accused Amit Kumar has committed the crime under section 21-61-85 of NDPS Act by keeping 20 grams of chitta/heroin in his possession. A complaint is being written on this matter and sent to Model Town police station through HC Rajiv Kumar 1310/KNL. The case should be registered and the case number should be informed. Special report of the case should be sent to Officer Bala. Another investigation officer should be sent for further investigation at the spot. I, ASI along with my fellow employees, am busy in investigation at the spot. Today: Near Indian Oil CNG Petrol Pump, Shanti Nagar, Panipat, HSNC Unit, Date 21-07-2021. At 9.30 PM Today, Police Station: As per arrival with complaint, HC Rajiv Kumar 1310/KNL, on receipt at above police station, in the presence of SI Satnarayan 122, FIR No. 266 dated 21.07.2021 U/S 21 NDPS ACT PS M.TOWN PPT was registered and copies of FIR were checked through computer. Copy Misal Police along with original complaint is being sent to the spot to Arinda HC Rajiv Kumar 1310/KNL. As second investigator, Munshi HC Rajiv Kumar 1310/KNL HSNCB was informed about reaching the spot on mobile no. 9813916907. The remaining FIR is being sent as a special report to the service of the area magistrate and officers of the special through CT Pradeep 1084."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been nominated as an accused in the instant FIR on the basis of disclosure statement of co-accused Amit Jangra, from whose possession 20 grams of heroin was recovered. He further contends that nothing has been recovered from the present petitioner and the quantity of recovered contraband is non-commercial in nature.

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 five other cases, wherein he is on bail.

4. Analysis

Be that as it may, considering the custody period i.e. 09 months and 10 days for which the petitioner has suffered incarceration; the petitioner has been nominated as an accused in the instant FIR on the basis of disclosure statement of co-accused Amit Jangra, from whose possession 20 grams of heroin was recovered; nothing has been recovered from the present petitioner in addition to the fact that the quantity of recovered contraband is non-commercial in nature.

Also considering the fact that investigation is complete, challan stands presented to Court on 09.08.2024, charges have been framed on 19.11.2024 and out of total 15 prosecution witnesses 01 witness has 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, he is on bail in all other cases and 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.

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 Nimesh 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 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.

21.04.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*