

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19624-2025 (O&M)

Date of Decision: 23.04.2025

Kulwant Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: None

Sandeep Moudgil, J.

(1). The Punjab & Haryana High Court Bar Association and Bar Council of Punjab & Haryana High Court have decided "No work day" for today i.e., 23.04.2025 on account of sudden demise of Sh. Bhupinder Singh Rathore, oldest member of the Bar Council.

(2). This is the fourth petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail to the petitioner in case FIR No.59 dated 13.03.2015 under Sections 21/22 of Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act) registered at Police Station Sultanwind, District Amritsar City.

(3). Facts as emerging in the FIR is reproduced as under:-

"Station House Officer PS Sultanwind, Jai Hind, Today ASI alongwith HC Gurbir Singh 1881, HC Sukhwant Singh 2711, HC Manjit Singh 371 were going on patrolling duty in search of bad elements on private vehicles from Sultanwind Link road through Dubarji GT Road Jalandhar and when the police party reached near Mariyawala turn then one clean shaven person aged about 38/39 years was seen coming carrying one plastic bag and after seeing the police party he got perplexed and tried to turn back and was about to throw that bag when I ASI with the help of team member apprehended him and on enquiry he disclosed his name as Kulwant Singh @Shankar son of Desa Singh caste Majbi r/o Patti Baba Jeewan Singh Sultanwind Amritsar

and before checking the bag in his hand and efforts were made to join independent witness from the public but no body was ready for that. Then I ASI check the polythene bag in the presence of team members and recovered 10 gram intoxicant powder which was kept in a separate plastic box and the remaining powder was found to be 290 gram after weighing the same and was kept in a separate plastic box. I put my seal of MS on both the boxes and Form M-29 was prepared. The seal was later on handed over to HC Gurjit Singh 1881 and the intoxicant powder and the seal was taken into police possession by way of separate fards. Kulwant Singh @Shankar could not produce any license or bill for keeping 300 gram powder in his possession which comes under the purview of Section 21/22/61/85 of NDPS Act. Ruqa is being sent through HC Manjit Singh 371 to Police Station for registration of the case and number of informed the the registering the same. Special report be issued to case be after the High officials and Illaqa Magistrate and control room be informed. I ASI alongwith others am busy on the spot for investigation. Sd/-Mukhtiar Singh, ASI.”

(4). The averments made in the petition would reveal that the petitioner has been falsely implicated in this case and that nothing is to be recovered from him. It is submitted that the petitioner was granted regular bail on 12.06.2015 and thereafter the challan was not presented for about 4 years and when the challan was presented the same was presented in the absence of the petitioner. It is further averred in the petition that the petitioner never came to know about the presentation of challan as well as the order dated 20.08.2021 declaring him to be the proclaimed offender as he came to know only when the police party raided his house on 30.08.2023.

(5). It is further mentioned in the petition that the bona fide of the petitioner can be seen from the fact that no sooner the petitioner came to know about the proclamation against him, he immediately reported in the police station and surrendered himself on 13.10.2023 and since then he is behind the bars. It is then submitted in the petition that the petitioner is a chronic patient

and has medical history (Annexure P1) and therefore, the concession of regular bail be extended to him.

(6). Custody certificate dated 22.04.2025 has been filed by the official present, which is taken on record, according to which, the petitioner has undergone 1 year 9 months and 1 days of custody in terms whereof, pursuant to submission of challan on 14.03.2019, charges have been framed on 24.01.2024 and out of total 10 PWs none have been examined till date. The custody certificate further reveals that the petitioner has been involved in serious offence which is what must the apprehension of the prosecution that he may abscond or influence the witnesses since trial proceedings are going on. That apart, there are two criminal cases already pending against him and in one FIR No.76 dated 12.05.2018 u/S 22/61/85 NDPS Act, registered at PS Sultanwind, he has been convicted.

(7). This Court has gone through the averments made by the petitioner in the paperbook.

(8). Be that as it may, considering the custody period i.e. 1 year 9 months and 1 day for which the petitioner has suffered incarceration and the fact that the petitioner is ailing and is undergoing treatment as also the fact that pursuant to getting knowledge of proclamation proceedings against him, he himself surrendered before the police and that the investigation is complete, challan stands presented to Court on 14.03.2019, charges framed on 24.01.2024 and none out of total 10 prosecution witnesses, have been examined so far, which is suffice for this Court 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.

(9). 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.

(10). 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.

(11). 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 the concession of bail.

(12). In view of the aforesaid discussions, this petition is allowed and 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.

(13). However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(14). The petition in the aforesaid terms stands allowed.

(15). The Jail Authority concerned is directed to intimate the said order to the petitioner-accused.

23.04.2025
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No