

2025:PHHC:052651



**234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-19929-2025 (O&M)
DECIDED ON: 24.04.2025**

SONU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anil Kumar Malik, Advocate
for the petitioner.

Mr. S.S. Pannu, Addl. AG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 BNNS, has been invoked for grant of regular bail to the petitioner in FIR No. 346 dated 13.10.2023 registered under Section 20, 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Bahalgarh, District Sonapat.

2. Facts

Facts as narrated in the FIR reads as under:-

“To, Sir, Station House Officer, Police Station Bahalgarh, Sonipat, Jai Hind, Today myself PSI along with ASI Rajendra No. 380/SPT, constable Surender No. 203/Panipat, constable Vikash No. 4530/Gurugram, constable Nikhil No. 3798/Gurugram are present at Garh Mirkpur Naka, District Sonipat, along with the Govt. Vehicle registration No. HR03Y7513, who's pilot is EASI Rakesh No.1629/Panipat in connection with investigation of

crime and search of drug dens, when an informer met myself PSI and informed that Balister son of Hari Singh resident of Shahpur and Sonu son of Sanjay resident of Shahpur and with them another person who is a resident of Laksar Haridwar, those deals in drugs, all three together were going in a Wagon-R car whose number is HR30Z6544 white in colour, from Barot to Goripur, UP with narcotics. They are coming towards Bahalgarh Sonipat. If they are caught by setting up a check post, then they can be caught along with the drugs, the informer is found to be credible, then a separate notice 42 NDPS is prepared and a report is registered along with the diary. Constable Vikash No. 4530/ is sent to Gurugram police station. I inform my fellow PSI officer about the informer, and free the secret informer and start the blockade. After about 20-25 minutes, a car was seen coming from U.P. Which the PSI stopped by signaling it with the battery and stopped the car whose registration number was on the front and back, the plate is HR30Z6544 and the colour of the vehicle is white. On asking the names and addresses of the three persons sitting in the vehicle, the driver told his name as Sonu son Sanjay resident Gandhi Colony Dhatauli Police Station Ganaur Sonipat and the handicapped person sitting on the conductor seat told his name as Balister son Hari Singh resident Shahpur Police Station Ganaur District Sonipat and the person sitting on the rear seat of the vehicle told his name as Gurdeep son Lal Singh resident village Harchandpur Chidiyapur Tehsil Laksar District Haridwar Uttarakhand. All the three persons were given notices under Section 50 NDPS one by one and were told that there is a strong suspicion of you having narcotic substances, you have the right to get yourself and the vehicle searched in front of any gazetted officer/magistrate sahab, on which the driver Sonu wrote in his own pen that I want to get myself and the vehicle searched in front of any gazetted officer/magistrate sahab who should be called on the spot. And the above mentioned Balister sitting on the conductor's seat and Gurdeep sitting on the rear seat of the

vehicle, both told in turn that they want themselves and the vehicle to be searched in front of a gazetted officer/magistrate saheb who should be called at the spot. The accused and the witnesses signed their respective reply notices under section 50 NDPS. The people coming and going at the spot were told about the investigation, all of them expressed their legitimate compulsion and left the spot. The PSI called gazetted officer Shri Virender Dalal, Deputy Excise & Taxation Officer (Sales Tax), Sonipat on his mobile no. 9416178913 at 2:51 AM from his mobile no. 9996711151 and requested him to come to the spot. The constable Vikash no. 4530/Gurugram at about 4 AM later got the report registered, diary DD no. 05 Date 13.10.2023 Police Station Bahalgarh present spot came, copy report diary was handed over to PSI which was kept. The time was around 4:30 AM gazetted officer Shri Virender Dalal, Deputy Excise and Taxation Officer(Sales Tax), Sonipat arrived at the spot, who asked the name and address of all the three persons and searched the PSI and ordered the PSI to search the three persons and the vehicle. The physical search report and search order were prepared. As per the orders of above gazetted officer Shri Virender Dalal, the PSI carried out physical search and search of the vehicle of the accused Balister son of Hari Singh resident of Shahpur district Sonipat and Sonu son of Sanjay resident of Gandhi Colony Hari Singh resident Shahpur Police Station Ganaur District Sonipat and the person sitting on the rear seat of the vehicle told his name as Gurdeep son Lal Singh resident village Harchandpur Chidiyapur Tehsil Laksar District Haridwar Uttarakhand. All the three persons were given notices under Section 50 NDPS one by one and were told that there is a strong suspicion of you having narcotic substances, you have the right to get yourself and the vehicle searched in front of any gazetted officer/magistrate sahab, on which the driver Sonu wrote in his own pen that I want to get myself and the vehicle searched in front of any gazetted officer/magistrate sahab who should be

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investigator was made. Who was informed to go to the spot as the second investigator SI SUKHBIR SINGH 578/RR to the spot, the situation was told to SHO sahab. The case was registered in the presence of ASI ASHOK 1377/SPT.4530/ Gurugram was given the responsibility of a personal investigator. As the second investigator, SI SUKHBIR SINGH 578/RR was informed to go to the scene of the incident and SHO sahab was informed about the situation. The case was registered in the presence of ASI ASHOK 1377/ SPT".”

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 and recovery of alleged contraband i.e., 1 kg 320 grams of hashish was recovered from the polythene bag lying under the seat. It is submitted on behalf of the petitioner that the co-accused namely Gurdeep @ Gurudeep has already been granted the concession of regular bail by this Court vide order dated 04.04.2025 passed in CRM-M-17491-2025 (Annexure P-1).

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. According to which, the petitioner is behind bars for 1 year 6 months and 8 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected falls within the category of commercial quantity, therefore, rigours of Section 37 of NDPS Act would be attracted. Though he could not controvert the fact that the co-accused namely Gurdeep @ Gurudeep has been enlarged on regular bail by this Court vide order dated 04.04.2025 (Annexure P-1).

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e., 1 year, 6 months and 8 days added with the facts that possibility of false implication of the petitioner cannot be ruled out at this stage, who is a person of clean antecedents and the co-accused namely Gurdeep @ Gurudeep has already been released on regular bail by this Court vide order dated 04.04.2025 (Annexure P-1) as well as the facts that investigation is complete, challan stands presented on 10.01.2024, charges have been framed on 27.02.2024 and out of total 15 prosecution witnesses, 8 has been examined so far, which is sufficient for this Court to infer that conclusion of trial would certainly take long time, this Court is of the view that no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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/Chief Judicial Magistrate/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

24.04.2025

Sham

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