

2025:PHHC:052778



249

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

**CRM-M-20284-2025
DECIDED ON: 24.04.2025**

SACHIN**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. AG Haryana

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

The jurisdiction of this Court under Section 439 Cr.P.C., (Section 483 of BNNS, 2023) seeking regular bail in FIR No. 19, dated 09.02.2023, under Sections 22-C, 27-A of NDPS Act, 1985 and Section 201 of IPC, registered at Police Station Uchana, District Jind.

2. Contentions:**On behalf of the petitioner**

It has been contended on behalf of the petitioner that he was not even name in the FIR and has been nominated on the basis of disclosure statement suffered by the co-accused. It is further contended that the recovery of 462 grams of Alprazolam and 1600 grams of Tramadol has been effected from the co-accused namely Ashok Kumar & Amit Kumar, who have also been granted the concession

of regular bail by this Court vide orders dated 14.08.2024 & 11.09.2024 (Annexures P-4 & P-5 respectively) passed in CRM-M-38465-2024 & CRM-M-37816-2024 respectively.

4. On behalf of the State/complainant

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which the petitioner has suffered incarceration of 1 year 4 months and 12 days. He could not controvert the fact that no recovery has been effected from the possession of the petitioner, who has been nominated on the basis of disclosure statement of the co-accused.

5. Analysis

In the present case, the petitioner has already suffered incarceration of 1 year, 4 months and 12 and except disclosure no incriminating material has been put forth by the prosecution to connect the petitioner with the alleged contraband. Moreover the main accused namely Ashok Kumar & Amit Kumar, from whom the recovery has been effected have already been enlarged on regular bail by this Court vide orders dated 14.08.2024 & 11.09.2024 (Annexures P-4 & P-5 respectively). Furthermore in the case in hand, after framing of charges on 31.05.2024 out of total 26 prosecution witnesses only 4 have been examined, meaning thereby conclusion of trial shall take considerable time, this Court is of the considered view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the 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 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 subject to 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.

24.04.2025

(SANDEEP MOUDGIL)
JUDGE

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*