

2025:PHHC:056092



235

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

**CRM-M-21669-2025
DECIDED ON: 30.04.2025**

**DAWINDER SINGH @ LULLA @ DAVINDER SINGH
.....PETITIONER**

VERSUS

**STATE OF PUNJAB
.....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Verma , Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 0104 dated 26.07.2023 registered under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Kot Isse Khan, District Moga (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“Station Office P.S. Kot Isse Khan "Fateh" Today, I ASI with ASI Charanjit Singh 94/Moga, HC Jagsir Singh 1295/Moga (alongwith Laptop, Printers, Etc.) constable City Jagdev Singh 1149/Moga on Government vehicles Tata Sumo vide bearing No. PB-13-Q-6823 which HC. Lakhbir Singh 1161/Moga was driving and left for patrolling and frisking. When around 11:05 AM police party reached at Pakka Rasta leads to Village Singpura alias Munan via Bus Stand Talwandi Nau Bahaar Kot Isse Khan, Zira Road. Then the on right

hand at the rice mill side two Non-Sikh young man wear seen on the Kachha Rasta, for the purpose to frisk then on suspicion ASI instruct to stop the vehicle and came out from the vehicle then before the ASI those two young man adroitly thrown away the transparent polythene in their hands and Peon attempted to run towards the fodder fields, who were nabbed by the ASI with the help of police party and on asking one of them told his name Davinder Singh @ Loola son of Nirmal Singh son of Gulzar Singh resident of village Munava P.S. Kot Isse Khan, District Moga and second young man told his name Amandeep Singh alias Gangu son of Sukhwinder Singh son of Darshan Singh resident of Village Munawa P.S. Kot Isse Khan, District Moga. Then the ASI with the police party alongwith Davinder Sing alias Loola and Amandeep Singh alias Gangu came near the transparent polythene thrown by them, then the loose intoxicant tablets of light orange colour were seen in both of the transparent polythene. ASI stopped six commuters to participate come public witness but everyone told their helplessness hence no public witness could be engaged. ASI took both transparent polythene, opened and counted the tablets and recovered 35/35 loose intoxicant tablets of orange colour. ASI put the light orange colour tablets in different transparent polythene then in cloak of the cloth and prepared the pulanda and stamp.'

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 the alleged recovery i.e., 35 tablets containing salt of Etizolam was not recovered from his conscious possession. He further submits that the petitioner is in custody since 29.07.2023, wherein investigation is complete nothing is to be recovered from the petitioner. The attention of this Court has been drawn to an order dated 24.03.2025 (Annexure P-3) passed by this Court in CRM-M5997-2025 vide which co-accused Amandeep Singh alias Gangu has been enlarged on regular bail.

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year 9 months.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband in the present is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. Analysis

Considering the facts that the petitioner has already suffered incarceration of 1 year, 9 months and is is a person of clean antecedents; co-accused has already been granted the concession of regular bail by this Court vide order dated 24.03.2025 (Annexure P-3) added with the fact that investigation is complete, challan stands presented on 13.10.2023, charges have been framed on 30.11.2023 and out of total 12 prosecution witnesses, only four have been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, 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 “**Balwinder Singh versus State of Punjab and Another**”, SLP (Crl.) No.8523/2024. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would

infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. *It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:*

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

5. **Relief:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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

30.04.2025

Meenu

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