



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21096-2025
DECIDED ON: 29.04.2025

VIKAS SEHRAWAT

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 CR.P.C. (483 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA 2023) for grant of regular bail to the petitioner in case FIR No. 58 dated 20.08.2023 under Sections 18 and 25 of ND&PS Act, 1985, Police Station Mehna, District Moga.

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

"Officer Incharge of Police Station Mehna "Fateh". Today the undersigned ASI along with ASI Manpreet Singh No. 1024/Moga, C-II Lovejeet Singh No. 765/Moga on government vehicle no.PB- 08-AY -2800 Bolero being driven by S/CT Davinderpal Singh 1201/Moga, were present near Bus Stand village Talwandi Bhangarian on

patrolling and search of dubious persons then the special secret informant met and gave information to the undersigned ASI that Vikas Sehrawat son of Prem Sehrawat resident of Badh Malk Tehsil and District Sonipat and Harsh Bajaj son of Jaspal Bajaj resident of Chaml, District Sirsa, Haryana are doing business of selling opium. Today, they are going ahead from Moga passing through the villages on Dusanjh Road in Verna Car bearing no. HR-08-V-0017 white color. If the check post / naka bandi is held on appropriate place then they both can be apprehended along with heavy quantity of opium. The information being concrete and reliable, by doing such act, above said Vikas Sehrawat and Harsh Bajaj have committed offence under section 18-61-85 NDPS Act. Hence, the document was written against Vikas Sehrawt son of Prem Sehrawt resident of Barh Malk, Tehsil and District Sonipat and Harsh Bajaj son of Jaspal Bajaj resident of Chaml District Sirsa Haryana and is being sent through ASI Manpreet Singh 1024/Moga to the police station for registration of case. After registering the case, case number may be informed. Special reports may be issued, PCR Moga and Senior Officers may be informed. As per instruction of Hon'ble Punjab and Haryana High Court Chandigarh, telephonic call was made to SCT Rajpal Singh Munshi CIA Staff Baghapurana for sending some regular NGO for further investigation, who told that ASI Sukhwinder Singh 490/Moga is being sent on the spot for further investigation.

3. Reliance has been made to the order dated 19.03.2025 (Annexure P-4) when the earlier petition seeking regular bail was withdrawn on the surmise that the State of Punjab made a submission before this Court

that remaining witnesses will be examined in the next one month and in case of failure to do so, the petitioner would be at liberty to move afresh on the same cause of action.

4. Today, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He on instructions conveyed to the Court that evidence is not yet complete and at the same time, submits that out of total 13 prosecution witnesses only 04 witnesses have been examined and 05 witnesses have been given up, meaning thereby 04 witnesses are yet to be examined. He further submits that the petitioner is a habitual offender as he is involved in another case.

5. Looking at the callous approach of the prosecution, it is evident that the conclusion of the trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period, wherein 04 kg of opium was recovered from the car bearing registration No.HR-08-V-0017.

6. 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 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.”

7. 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.

8. 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 concession of bail.

9. 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.

10. In the afore-said terms, the present petition is hereby allowed.
11. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

29.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No