



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CRM-M-21457-2025

DATE OF DECISION: 19.05.2025

HARPREET SINGH ALIAS HAPPY

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abheysheer Singh, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in FIR No. 103 dated 21.08.2021 u/s 21 of NDPS Act and Section 3 of Indian Passport Act 1920 and Section 14 of Foreigners Act 1946 [Later on added section 18/25/29 of NDPS Act and Section 473 of IPC 1860] registered at Police Station Ramdas, District Amritsar Rural (Annexure P-1), in the interest of justice.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘12. To the SHO Police Station Ram Das today I, ST along with ASI Jugal Kishore 306 Ct Pavitar Singh 1745, PHG Kewal Singh 3689 was travelling by private vehicle in connection with patrolling and barricading and in search of ante social elements. Area village Malakpur. There came undercover and he intimated



me that Nirmal Singh @Sonu @Soni Mehar son of Gurmeet Singh resident of Bhakna Kalan. Police Station Gharinda is wandering in the border area with some of his friends on his Activa scooter No PB-02-DW-3559 and motorcycle mark Splendor No PB-46-L-1188. That Sonu has connections with Pakistan smugglers, the smuggles herein from across the fencing wires and supplies the same in India. There is a smuggler by the name Jagga who is staying in Malaysia, he has connections with him. Today they have planned to smuggle a huge consignment of heroin from Pakistan near the Panjaraian BSF post. If barricading is formed near the border and then aforementioned Nirmal Singh & Sonu @ Soni Mehar along with his friends and a huge consignment of heroin can be apprehended. This information being true and trustworthy and the offence is found to be committed under section 21-61-85 NDPS Act 3-34-20 IP Act. 14 F Act. A written note is prepared and for registration of FIR same is forwarded to the Police Station by hand through PHG Kewal Singh 3689. FIR be registered and No. of the same be intimated. Special reports be prepared and be forwarded to the Area Magistrate and the senior Police officers In- charge Police Control Room be intimated. I SI along with Police party proceed to the site intimated by the undercover i.e. near the Panjaraian BSF post. Area village Malakpur time 01:25 AM Sd/- Sukhwinderjeet Singh St Police Station Ram Das date 21.08.2021 Action taken at Police Station On receipt of the aforementioned written note at the Police Station an FIR was registered under the aforementioned sections/ Acts Original written note and a copy of FIR are forwarded to the SI for further enquiry by hand through PHG who bought it Special reports are being prepared and being sent to the senior Police officers by hand through HC Surjit Singh 301 In-charge Police Control Room is being intimated by hand through wireless Report No 4 concluded, time: 02:55 AM.'

Today, compliance report by way of affidavit of Alok Shekhar, Addl. Chief Secretary to Government of Punjab, Department of Home Affairs has been filed by learned State Counsel, the same is taken



on record. The relevant paragraphs No. 5 explaining the reasons for delay in trial has been given is reproduced below “-

- 5. That as per record and report of District Attorney, Amritsar received from the office of Director Prosecution and Litigation vide Letter No. 10(Special) 26/01 dated 03.05.2025, the following are the sequence of events and reasons for the delay in the trial in the aforesaid case:*
- I. That in the present FIR No.103 dated 21.08.2021, police had presented challan against accused Hardeep Singh, Harpreet Singh @ Happy and Ranjit Singh @ Beri on dated 18.02.2022 under section 21/18/29 NDPS Act, 25 NDPS Act and under section 3-34-20 Indian Passport Act, 14 Foreigners Act, Section 473 IPC and case was fixed for 03.03.2022 as the said date was already fixed in remand papers of the accused.*
- II. That on 03.03.2022, accused persons were not produced by the Jail Authorities and their production warrants were issued by the Hon'ble Court for dated 11.04.2022. On 11.04.2022, accused persons were not produced by the Jail Authorities and production warrants of accused were issued by the Hon'ble Court for dated 18.05. 2022. On 18.05.2022, consideration on charge was not addressed and adjournment was sought and case was adjourned 31.05.2022 by the then Hon'ble Court of Sh. Daljit Singh Ralhan, Judge Special Court, Amritsar.*
- III. That on 31.05.2022 the charges under section 21/18/25/29 NDPS Act and 473 IPC were framed against accused persons Hardeep Singh, Harpreet Singh @ Happy and Ranjit Singh @ Beri by the then Hon'ble Court of Sh. Daljit Singh Ralhan, Judge Special Court, Amritsar and case was adjourned to 02.08.2022 for prosecution evidence by the Hon'ble Court.*
- IV. That on 02.08.2022, PW ASI Jugal Kishore was present but could not be examined as accused sought adjournment on the ground that they want to engage counsel and said PW was bound down for 05.09.2022 and no other prosecution witness was present and summons issued to the other prosecution witnesses by the Hon'ble Court were received back unserved.*
- V. That on 05.09.2022 accused were not produced by the Jail authorities and production warrants of accused were issued for 27.10.2022 by the Hon'ble Court and on that day no prosecution witness was present and summon issued to the prosecution witnesses were received back unserved. After that the Hon'ble Court issued summons to entire prosecution witnesses for 27.10.2022.*
- VI. That on 12.10.2022 supplementary challan of accused Nirmal Singh was presented in the Court and the same was attached with the main challan. On dated 27.10.2022 he was not produced by the Jail Authorities*



and hence his production warrants were issued for 21.11.2022. On 21.11.2022 charge against accused Nirmal Singh along with co-accused Hardeep Singh, Harpreet Singh @ Happy and Ranjit Singh @ Beri was again framed under section 18/21/25/29 of NDPS Act and section 473 IPC by the Hon'ble Court and case was fixed for 16.01.2023 for evidence of prosecution and PW's were summoned.

VII. That on 16.01.2023 PW1 SI Sukhwinderjit Singh was present and partly examined in chief and he was bound down for 06.03.2023 and on that day no other prosecution witness was present. PW Rakesh Jugatpal had not come present despite service and he was summoned throughailable warrants in the sum of Rs.5000/- with one surety in the like amount by the Hon'ble Court and remaining entire prosecution witness were summoned for the date fixed i.e. 06.03.2023.

VIII. That on 06.03.2023 PW Rakesh Jugatpal was present but could not be examined for want of record and he was bound down and further PW SI Sukhwinderjit Singh who was bound down on last date did not come present and he was summoned throughailable warrants in the sum of Rs.5000/- with one surety in the like amount and case was further adjourned for summoning remaining entire prosecution witnesses. On 02.05.2023 the said case was transferred to Ld. Court of Ms. Monica Sharma, JSC, Amritsar and case was already fixed for 08.05.2023.

IX. That on 08.05.2023 accused were produced in the Court but file was put up before Ld. Duty Judge as Ld. Presiding officer had gone to attend the induction training program of newly promoted Additional District & Sessions Judges and Ld. Duty Judge further adjourned the case for dated 03.07.2023. On the said dated i.e. 08.05.2023 prosecution witness Rakesh Jugatpal present in the Court and his presence was marked by Ld. Duty Judge and he was also bound down for next date of hearing i.e. 03.07.2023 along with summoning of entire prosecution witness.

X. That on 03.07.2023 accused were produced in the Court but no PW was present on that day and case was adjourned to 06.09.2023 for remaining PW's. On 06.09.2023 PW PHG Kewal Singh was given up by concerned Addl. PP for the State and PW4 Rakesh Jugatpal was present and was cross examined and further no other PW was present and as such the case was adjourned to 12.10.2023 for summoning of PW's at Sr. No.12 and 13 mentioned in the list of witnesses.

XI. That on 12.10.2023 file was put up before Ld. Duty officer as Ld. Presiding officer was on leave. PW's Amarpal Singh and Jatinder Singh present for their evidence in Court and were bound down for 01.11.2023 for their evidence.



XII. That on 01.11.2023 accused Hardeep Singh, Harpreet Singh, Nirmal Singh and Ranjit Singh not produced by the Jail Authorities and their production warrants were issued for 08.12.2023 with direction to produced them in Court through Video conference and on that day PW Amarpal Singh and Jatinder Singh are not present for their evidence despite being bound down by the Hon'ble Court and they were summoned through non-bailable warrants for date fixed i.e. 08.12.2023.

XIII. That on 08.12.2023 accused Hardeep Singh, Harpreet Singh, Nirmal Singh and Ranjit Singh were not produced and as such their production warrants were issued for 04.03.2024 with the directions to produced them in the Court through video conference. On the same day non bailable warrants issued for PW Amarpal Singh and Jatinder Singh were received back duly served but they did not turn up for their evidence and as such their fresh NBW's were issued for the said date.

XIV. That on 04.03.2024 file put up before duty officer as Ld. Presiding officer was on leave. Accused Hardeep Singh, Harpreet Singh, Nirmal Singh and Ranjit Singh were not produced and as such their production warrants were issued for 10.04.2024 with the directions to produced them in the Court through vide conference. On the same day non bailable warrants issued by PW Amarpal Singh and Jatinder Singh were received back duly served but they did not turned up for their evidence and as such there fresh NBW's were issued for the said date.

XV. That on 10.04.2024, Sh. Vinod Attri Advocate had filed power of attorney on behalf of accused Hardeep Singh which was taken on record and PW5 Ct. Jatinder Singh and PW6 Ct. Amarpal Singh were present and examined and further case was adjourned to 12.07.2024 for remaining PW's. On 12.07.2024 PW1 SI Sukhwinderjit Singh was present and his examination in chief was recorded partly and his further examination in chief was deferred as court time was over and witness was bound down for 21.08.2024 for his further examination. PW Pavitar Singh present in the Court was bound down for 21.08.2024 for his evidence.

XVI. That on 21.08.2024 PW1 SI Sukhwinderjit Singh was present for his evidence but his evidence could not recorded as the court time is over and he was bound down for 19.09.2024. PW Pavitar Singh was not served and as such he was summoned through bailable warrants for 19.09.2024.

XVII. That on 19.09.2024 PW Ct. Pavitar Singh has been given up by the concerned APP for the State and PW1 SI Sukhwinderjit Singh is present for his evidence but his evidence could not be recorded and as such he was bound down for 24.09.2024 for his further examination.

XVIII. That on 24.09.2024 PW1 SI Sukhwinderjit Singh was present for his evidence but his evidence could not recorded as the court time was over



and he was bound down for 26.09.2024 for his further examination. XIX. That on 26.09.2024 PW1 SI Sukhwinderjit Singh was present and his examination in chief was recorded partly and his further examination in chief was deferred for want of case property and he was bound down for 15.10.2024 for his further examination and accused were ordered to be produced in the Court on the date fixed.

XX. That on 15.10.2024 which was declared holiday due to Gram Panchayat election and an application for exempting the personal appearance of accused Hardeep Singh has been filed which was allowed by the Court and PW1 Sukhwinderjit Singh not present for his further evidence and he was summoned throughailable warrants for 25.11.2024.

XXI. That on 25.11.2024 PW1 Sukhwinderjit Singh was present and his further examination in chief was recorded partly and his examination was deferred as concerned APP for the state had moved an application under section 348 BNSS for placing on record certain documents 17.12.2024 for filing reply by accused persons through their counsels.

XXII. That on 17.12.2024, reply to application under section 348 BNSS moved by Ld. APP was not filed by counsels for the accused persons and as such case was adjourned to 11.03.2025 for filing reply to said application, subject to last opportunity.

XXIII. That on 11.03.2025 reply to application under section 348 BNSS moved by Ld. APP, was filed by the accused persons through their counsels and case was adjourned to 09.04.2025 for consideration on said application.

XXIV. That on 09.04.2025, accused Harpreet Singh, Nirmal Singh and Ranjit Singh were not produced in the Court and as such their production warrants are issued for 06.05.2025 with directions to produce them in the Court through video conference and on request of the counsel for accused, the case is adjourned to 06.05.2025 for consideration on application under section 348 BNSS.

XXV. That now the case is fixed for 24.07.2025 for consideration on application under section 348 BNSS.

XXVI. That the trial of present case was not commenced earlier as all the accused were not produced or appeared before the trial court on each and every day. Charge against accused persons Hardeep Singh, Harpreet Singh and Ranjit Singh was framed on 31.05.2022 but on presentation of supplementary challan against accused Nirmal Singh, amended charge sheet against all the accused persons was framed on 21.11.2022 and thereafter prosecution had examined 06 prosecution witnesses and given up



two prosecution witnesses. The remaining prosecution witness will also be examined without any delay.

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. It is his submission that the petitioner has been in custody for more than three and a half years and the trial is moving at a very low speed as since framing of charges on 21.11.2022, out of total 30 PWs, 3 PWs have given up and only 6 PWs have been examined so far. He contends that there is no material to connect the petitioner with the alleged offence and no recovery at all has been effected from conscious possession of the petitioner out of alleged recovery of 40 Kg. and 687 grams. He submits that co-accused namely Hardeep Singh has already been granted concession of regular bail by this Court vide order dated 11.03.2024 passed in CRM-M-6013-2023 (Annexure P-4), therefore, prays for grant of regular bail to the petitioner.

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.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in other FIRs also, however is not a position to controvert the submissions that the trial is moving at a slow speed and the delay cannot be attributed to the petitioner.



4. Analysis

As per the compliance report filed today in Court, though now the deponent therein has stated qua Standing Order No.17 of 2023 had already issued instructions to its officials to complete the evidence in NDPS cases i.e. timely appearance of officials prosecution witnesses before trial court(s) to record their evidence and further, the Home Department has also framed comprehensive guidelines to strength the internal mechanism for affective checking of challans and to ensure timely and efficient production of prosecution witnesses in cases under the NDPS Act and these guidelines are intended to streamline coordination among the investigating agencies, jail authorities and prosecution agency, thereby reducing avoidable delays and improving the pace of trial proceedings.

After having consideration to the above discussion as well as the facts that the petitioner has already suffered sufficient incarceration i.e. 3 years, 7 months and 28 day, co-accused has already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 12.10.2022 charges stands framed on 21.11.2022 out of 30 prosecution witnesses, 3 PWs have given up and only 6 PWs has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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.”

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.”*

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.

5. Relief

In view of the aforesaid discussions made hereinabove, 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.

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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

19.05.2025
anuradha

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