

2025.PHHC:056790



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

**CRM-M-22234-2025
DECIDED ON: 01.05.2025**

CHARLES MASIH ALIAS BITTA**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 3rd time under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail to the petitioner in case FIR No.28 dated 24.03.2024 under Sections 21, 27-A, 61 and 85 of NDPS Act, 1985 registered at Police Station Fatehgarh Churian, Police District Batala, District Gurdaspur (Annexure P-1).

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

Statement of LR/ASI Varinder Singh No. 2431/Batala, Police Station Fatehgarh Churian, Police District Batala. Stated that today, myself along with LR/ASI Mohan Singh no. 1855/Batala; LR/ASI Satnam Singh No. 1890/Batala and S/CT Parminder Singh No. 2178/Batala, on private vehicles, in connection with patrolling

and search for bad elements and barricading was present near Rest House, Daduyodh culvert pavement and were making checking of vehicles of suspected persons and then, two non-sikh young boys riding on motor cycle marka De-luxe of silver colour, without number plate, were seen coming from the side of Dera road, who, on seeing the police party became perplexed and abruptly tried to take U-turn and on the basis of suspicion, the vigilant police party tried to apprehend them and in the process of apprehension, the young boy occupying the pillion seat was apprehended from back by myself/ASI while the said boy was throwing something after taking out the same from right pocket of the pyjama worn by him and other young boy, driving the motor cycle, was apprehended by the fellow officials. On asking about their names and address from the apprehended young boys by me/ASI, young boy apprehended by me occupying the pillion seat, disclosed his named as Charlas Mash alias Bitta, son of Inderjit, resident of village Dayal Bhatti, Police Station Ramdas, District Amritsar, and the motor cycle driver disclose his name as Bikramjeet Singh alias Bikka son of Dheer Singh, resident of village Gaggomahal, Police Station Ramdas, District Amritsar. On asking by me/ASI from the aforesaid apprehended young boy Charlas Masih alias Bitta as to what he was throwing after taking out from the pocket, then, he stated that he is possessing heroin wrapped in a polythene envelope, which I was going to throw after taking out from my pocket. Availability of some narcotic substance in possession of other aforesaid apprehended young boy Bikramjeet Singh alias Bikka is also being suspected and myself, being a local ASI, am unable to conduct proceedings under NDPS Act, upon which, I had conveyed information through mobile phone to S.H.O. of Police Station with request to send some regular A.S.I./Investigating Officer on the spot for conducting the proceedings and you along with LR/ASI Sukhraj Singh No.2129 have come present on the spot and aforesaid apprehended suspect Charlas Mash alias Bitta along with polythene envelope containing heroin being possessed in hand and aforesaid suspect Bikramjeet Singh alias Bikka along with motor cycle have been produced before you and statement has been got recorded with you.

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the alleged recovery of contraband i.e. 40 grams of heroin was effected from the petitioner, but the same is non-commercial in nature. The attention of this Court has been drawn to an order dated 29.04.2025 passed in CRM-M-21314-2025 vide which co-accused Bikramjeet Singh @ Bikka has already been enlarged on bail. He contends that investigation in the matter is complete, challan stands presented to the Court and nothing is to be recovered from him, who is in custody since 27.03.2024. Additionally he submits that there is non-compliance of mandatory provisions of Section 42 and 50 of NDPS Act.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is on production warrants in another case as well. He further submits that the contraband involved in the present case is heroin, which is most dangerous drug and is taking the lives of young man, therefore, the petitioner deserves no leniency.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 01 year, 01 month and 04 days; the alleged contraband i.e. 40 grams of heroin is non-commercial in nature; co-accused Bikramjeet Singh @ Bikka has already been enlarged on bail vide order dated 29.04.2025 added with the fact that investigation is complete, wherein challan stands presented to Court on 18.09.2024 and out of total 14 prosecution witnesses, 05 witnesses have been examined, which is suffice for this Court to infer that the conclusion of trial shall

take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve 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 lend the petitioner in a situation of denial the concession of bail.

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

01.05.2025

Meenu

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