

2025:PHHC:056716



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

**CRM-M-22143-2025
DECIDED ON: 01.05.2025**

HEERA SINGH**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Gaurav Kalsi, Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

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

This is Fourth petition under Section 483 BNSS for grant of regular bail to the petitioner in case F.I.R no. 128 dated 19.09.2022 under sections 15 & 29 of NDPS Act 1985, Police Station Sujanpur, District Pathankot during the pendency of the trial.

2. Facts

Facts as narrated in the FIR reads as under:-

“SHO, Police Station Sujanpur, Today I, ASI along with ASI Balwinder Singh 1267, S/CT Nishan Singh 342 PHC Charan Singh 1098 PHG Madan Lal 861, by riding on private vehicle along with Laptop, Printer, were present at Surnderchak Turn, Malikpur for patrolling, searching and to conduct checking of anti-social elements and were carrying out the checking of vehicles and persons passing

from there, in the meantime, a special informer came and informed me ASI that Charanjit Singh son of Tarsem Singh, resident of Ram Tirath road, Village Mahal, Police Station Kamboj, District Amritsar, who is running the business of Truck Transport and also indulged into the illegal business of selling poppy husk on the pretext of Truck transport and he is having a Truck bearing registration number HP 12 A 8834, having six tyres and Amarjeet Singh@ Bobby son of Veer Singh, resident of Chatiwind, Nehar Chowk, Tarn Taran Amritsar is the driver of the same and Heera Singh son of Mahinder Singh, resident of Ram Tirath road Village Mahal, District Amritsar is conductor of the same and today, the abovesaid Charanjit Singh, by loading poppy husk in the boot of his car bearing number PB 10 EE 9072, Marka ETIOS, is coming from the Madhopur Side, while doing reiki and his truck bearing registration number HP 12 A 8834 in which some poppy husk is loaded in Tool Box, the same is also following him, if checking is conducted by laying check post, then huge quantity of poppy husk can be recovered, due to the information being concrete and reliable, I ASI, after introducing the informer with the colleagues, have started conducting search of vehicles coming from the side of Madhopur, then after some time, one car bearing registration number PB 10 EE 9072 Marka ETIOS and behind it, a Truck bearing registration number HP 12 A 8834 were seen coming, the same were stopped by me ASI by giving signal, then the name of the person driving the car nearing registration number PB 10 EE 9072 Marka ETIOS and driver of Truck number HP 12 A 8834 and conductor was asked turn by turn, the person driving the car bearing number PB 10 EE 9072 Marka ETIOS told his name Charnjit Singh son of Tarsem Singh, resident of Ram Tirath road, village Mahal, Police Station Kamboj, District Amritsar and the truck driver told his name as Amarjit Singh@ Bobby son of Veer Singh, resident of Chatiwind, Nehar Chowk, Tarn Taran road, Police Station C Division, Amritsar and the Conductor told his name as Heera Singh son of Mahinder Singh, resident of Ram Tirath road, Village Mahal, Police Station Kamboj, District Amritsar. I, ASI told them that, there

is suspicion of having some intoxicant substance in your car bearing number PB 10 EE 9072 Marka ETIOS and Truck bearing registration number HP 12 A 8834. Search of your car as well as Truck is required to be conducted. You have the legal right to get your above numbered car and Truck searched from some Gazetted Officer or some Magistrate. They all in common voice have said that we want to conduct search our car and Truck from some Gazetted Officer. Upon which, non-consent memos have prepared separately and I ASI have called from my mobile phone number 88473-69125 to Sh. Rajinder Singh PPS, Deputy Superintendent of Police, Sub Division Dhar Kalan on his mobile phone number 88475-37244, apprised him of the circumstances and requested him to come on the spot. Upon which, after 15-20 minutes, Sh. Rajinder Singh PPS Deputy Superintendent of Police, Sub Division Dhar Kalan along with government force, came on the spot by riding on the government vehicle. Who introduced the arrested persons Charanjit Singh son of Tarsem Singh resident of Ram Tirth Road Village Mahal Police Station Kamboj District Amritsar, Amarjit Singh @ Bobby son of Veer Singh resident of Chati Wind Nehar Chowk Tarn Taran Road Police Station C Division Amritsar, Hira Singh son of Mohinder Singh resident of Ram Tirth Road Village Mahal police station Kamboj district Amritsar about his rank and posting and said that I am posted as a gazetted officer sub division Dhar Kalan. There is suspicion of having some intoxicant substance in your above numbered car and Truck. Your car bearing number PB 10 EE 9072 make ETIOS and truck number HP 12 A 8834 are to be searched, but you have the legal right to get your above numbered Car and Truck searched from me or some Magistrate, who said that we are full faith in you, you can search us and the car bearing registration number and the truck bearing registration number. Upon which consent memos were prepared separately and before searching the car bearing registration number and truck bearing registration number, an attempt was made join the public witness in the police party, but no one was ready join the police party by stating their legitimate compulsion, so I, ASI, as per

the instruction of DSP, in the presence of fellow employees, have carried out the search of abovesaid car and truck as per law, upon conducting the search of the car, one weighty plastic bag was recovered from the boot of the above numbered car, the same was opened and smelled, from which poppy husk was recovered, then from conducting the search of above numbered truck, three weighty plastic bags were recovered from the tool box of the same, which were opened, smelled and checked, then poppy husk was recovered from all the all the bags. The same was weighed turn by turn, after arranging the electronic weighing scale. Upon weighing the bag, which was recovered from the car bearing registration number PB 10 EE 9072 Make ETIOS, the same was found to be 20 Kilogram of Poppy Husk including the plastic bag, which was marked as A-1. The remaining bags of poppy husk, which were recovered from the truck bearing registration number HP 12 A 8834 were weighed turn by turn. Upon weighing the first plastic bag of poppy husk, it came out to be of 17 Kilogram including the plastic bag, which was marked as B-1, then the weight of second plastic bag of poppy husk was done, it came out to be 17 Kilogram including the plastic bag, which was marked as B-2, then weight of third bag of poppy husk was done, which came out to be 16 Kilogram including plastic bag, which was marked as B-3. All 4 recovered plastic bags of poppy husk were sealed by me ASI with my seal bearing YP 1/1 and sealed by DSP with his seal RS1/1 and compliance of form M29 was made on the spot and sample seal was prepared separately. After using the seal, I ASI have handed over the seal to ASI Balwinder Singh 1267/PTK and DSP took his seal with him after using the same. The recovered poppy husk, car bearing registration number PB 10 EE 9072 Make ETIOS and Truck bearing registration number HP 12 A 8834 were taken in to police possession vide separate memos. The accused persons namely Charanjit Singh son of Tarsem Singh resident of Ram Tirth Road Village Mahal Police Station Kamboj District Amritsar, Amarjit Singh @Bobby son of Veer Singh resident of Chati Wind Nehar Chowk Tarn Taran Road Police Station C Division Amritsar, Hira Singh son of Mohinder Singh

resident of Ram Tirth Road Village Mahal police station Kamboj district Amritsar have committed the offence under section 15-61-85 of NDPS Act by keeping in their possession 70 Kilogram of poppy husk. Apples were loaded in the truck, which are in cartons, a separate process is being carried regarding the same, the same is taken in to police possession vide separate memo, upon which ruqa is reduced in to writing and is being sent to Police Station through S/CT Nishan Singh 342 for registration of FIR. Case number be informed after registration. Special reports be issued and sent to Ilaqa Magistrate and senior officials. I ASI is busy in investigation along with fellow employees. Sd/- Yashpal ASI, Police Station Sujampur. Dated 19.09.2022. Today in the area of Sunderchak turn, AT 9.20 PM.”

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 70 kg poppy husk was not effected from his conscious possession. He further submits that the petitioner is not the owner of the truck in which the alleged recovery has been effected. He asserts that the petitioner is in custody since 23.09.2022, wherein investigation is complete and nothing is to be recovered from him.

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 2 years, 7 months and 7 days.

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 cases. Additionally he submits that the

recovered contraband falls under commercial category. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. **Analysis**

As can be gathered from facts, the petitioner has already suffered sufficient incarceration of 2 year, 7 months and 7 days and a perusal of the record would depict that after framing of charges on 28.04.2023 i.e., two years have since lapsed by now but only 4 prosecution witnesses have been examined, which is sufficient for this Court to infer that conclusion of trial shall take considerable time, therefore, 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.”*

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>