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2025:PHHC:058906



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

**CRM-M-22674-2025
DECIDED ON: 05.05.2025**

SHIVRAJ SINGH ALIAS BULLA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Charanjit Singh Bahia, Advocate and
Mr. Sumeet Singh Brar, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of B.N.S.S./439 Code of Criminal Procedure for the grant of Regular Bail to the petitioner in Case FIR No. 116 dated 23.11.2023 Under Section 21(C), of NDPS Act registered at Police Station Nandgarh, District Bathinda, Punjab, (Annexure P-1).

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

"Copy of Ruqa, SHO Police Station Nandgarh Fateh Today I Sl alongwith ASI Jasvir Singh 1554/Bathinda SCT Joginder Singh 2038/Bathinda CT Gurjit Singh 1995 alongwith Laptop Printer that Laptop Printer was operating by CT Gurjit Singh

1995 in a private car which was driven by ASI Jasvir Singh 1554 with regard to checking of anti-social elements the nakabandi was erected from village Raike Kalan to the road going towards canal bridge village Manna in the area of village Raike Kalan then time will be about 7:00 PM that from the side of village Maana one motorcycle was seen coming to whom myself SI signaled him with help of torch, then on that two persons were riding on seeing the police party suddenly stopped the motorcycle and tried to turn back, then myself SI on the basis of suspicion with the help of co-officials by apprehending both the persons along with motorcycle asked their name and address, the motorcyclist disclosed name persons along with and address the his name as Satnam Singh alias Satta son of Jarnail Singh resident Jhumba and the person sitting of motorcycle disclosed his name of on as Shivraj Singh alias Bulla son of Gurmail Singh resident of Raike Kalan, in the light of the torch it has seen that between them one black and orange colour bag was lying that due to opening the mouth of the bag the leaves of intoxicant tablets were clearly seen in it. The efforts were made to join as public witness, but due to darkness no witness was found at the spot. Thereafter myself SI in presence of the witnesses checked the black and orange colour bag lying between the above Satnam singh alias Satta and Shivraj singh alias Bull then from the bag the intoxicant tablets were clearly seen were recovered, by taking out the Strips on counting, 100 strips of intoxicant tablets, every strips contains 10 tablets total 1000 intoxicant tablets whose one batch no. CLEVIDOL 100 SR Tramadol Sustained Release Tablets IP all of these leaves batch number and MFG date has been erased with the black marker and in all leaves MFG 23 EXP AUG 25 has been written and other 100 leaves of intoxicant tablets every leaf contains 1000 intoxicant tablets 10 tablets total whose one batch number mark release total Tramowell 100 Tablets SR Tramadol Prolonged IP BNOPHRAF07 MFG

DATE 12/2022 EXPIRY DATE 11/2024 was written that total 2000 tablets recovered.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case, as is evident from the fact that he has been shown as a pillion rider, while the co-accused, Satnam Singh, is alleged to have been riding the motorcycle, who is 50% physically disabled, as per the disability certificate dated 07.07.2010 (Annexure P-2) issued by the Civil Surgeon, Bathinda. He further contends that the co-accused being differently abled person with 50% disability, who is alleged to be driving the motorcycle, is highly improbable. He further contends that nothing has been recovered from the conscious possession of the petitioner.

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 quantity of alleged contraband i.e. 100 strips of intoxicating tablets containing 10 tablets per strip labelled as Clevidol-100 SR and 100 strips of intoxicating tablets containing 10 tablets per strip labelled as Tramowell-100 SR containing 691 grams of Tramadol Hydrochloride salt is commercial in nature, which was recovered from the present petitioner and his co-accused Satnam Singh @ Satta while riding the motorcycle on which the present petitioner was a pillion rider added with the fact that he is involved in another case.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 1 year, 05 months and 08 days and the facts that investigation is complete, wherein after framing of charges on 21.02.2024 out of total 15 prosecution witnesses, 07 witnesses have been examined and 04 witnesses have been given up, 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.

Another aspect to be taken into account is that the co-accused Satnam Singh being differently abled person with 50% disability, who is alleged to be driving the motorcycle, is highly improbable but is yet to be established qua the said fact during the course of evidence before the trial court. Since the trial is taking long time, it would be unjust or unfair in the prevailing circumstances after having perused the disability certificate issued by the Civil Surgeon, Bathinda (Annexure P-2), to detain the petitioner behind the bars for indefinite period.

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 concession of bail.

5. **RELIEF:**

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.

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.

05.05.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*