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2025:PHHC:061133



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23967-2025
DECIDED ON: 08.05.2025

ROHIT SHARMA ALIAS RAJUPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.B.S. Randhawa, 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 for the third time under Section 483 of BNSS seeking grant of regular bail pending trial to the petitioner in case FIR No. 113 dated 02.06.2022, under Section 22 (C) of NDPS Act, 1985, registered at Police Station Sadar Tarn Taran, District Tarn Taran.

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

"Station House Officer Sadar Tarn Taran, Jai Hind. Today I, ASI, alongwith ASI/LR Davinder Kumar 967/II, HC PargatSingh 107, HC Avtar Singh 50/TI were going in a government vehicle Balero, PB 65E 1959 driven by SI Pargat Singh No. 60 alongwith Laptop Printer on patrolling duty in search of bad elements in the area of Anti Narcotic Cell Tarn Taran to city Area and were little ahead of Adda village Kad Gill, Dera Radha Swami and put a Nakabandi and started

checking the vehicles and after about 10 minutes one clean shaven person was seeing coming on TVS Jupiter No. PB- 7E-302 from Tarn Taran side and I, ASI, gave a signal to stop and instead of stopping the vehicle he tried to turn it back and I ASI on the basis of doubt apprehended him and enquired his name who informed his name as Rohit Sharma @ Raju son of Ram Pal Sharma resident of Amritsaria Ram Gali Cinema Wali Tarn Taran and I, ASI, told him that there seems to be some intoxicants with him or in vehicle and therefore, search is to be made and you have got a legal right to get your self and the vehicles searched in the presence of gazette officer or Magistrate Sahib who can be called at the spot on which Rohit Sharma told that he want the searched to be done in the presence of some Gazetted Officer and on this his non-consent memo was prepared and Sh. Brijender Singh, PPS, DSP, Sub Division, Tarn Taran was informed on mobile and was requested to come on the spot and DSP Sahib reached after 20 minutes alongwith his staff in a government vehicle and enquired the name of the apprehended person and introduced himself that I Barjinder Singh PPS am posted as DSP Sub Division Tarn Taran and am in uniform with name plate on it and I am Gazetted Officer of Punjab Government and I have got the information that there seems to be some intoxicant with you or in the vehicle and therefore, search is to be done and you have got a legal right to get the search done either from some other Gazetted Officer or Magistrate who can be called at the spot on which he stated that I have got full trust on you and you can conduct my search as well as that of the vehicle and on this consent memo was prepared. An effort was made to join some independent witness from the public but nobody was ready for that. Then DSP searched the vehicle TVS Jupiter and one plastic bag was found under the seat of TVS and on checking 5 boxes of 50 strips each with 10 tablets in each strips, total 2500 intoxicant tablets of tramadol (Calludol -100-SR) were found on which a batch no. RRT 0422/007 manufacturing date April 22 and expiry

date March, 24 was written on the each strip. The 2500 tablets, i.e., 5 boxes were kept in a plastic bag and I ASI prepared the parcel and put my seal of NS and DSP put his seal of BS on it. I ASI after using the seal handed over the same to ASI Davinder Kumar 967/TT and DSP Sahib after using the seal kept the same with himself. The parcel, seal, vehicle TVS Jupiter No. PB- 46AE-4302 colour silver were taken into police possession by way of separate fard. The accused Rohit Sharma by keeping 5 boxes of 2500 tablets have committed an offence under Section 22(c) / 61/85 of NDPS Act. Therefore ruga after typing on laptop and getting print is being sent through HC Avtar Singh, 50/TT to police station. Number of the case be informed after registering the same. Special report be issued to high officials and Illaga Magistrate and control room be informed. I alongwith others am busy on the spot for investigation.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, as no recovery was effected from his conscious possession. He further states that the petitioner was apprehended from the area of Dera Radha Swami at around 12:30 p.m. and taken to the Narcotic Cell, Tarn Taran. Subsequently, at about 5:45 p.m., false naka was shown and a fabricated recovery was shown against him. It has been contended on behalf of the petitioner that the petitioner is not a habitual offender as he is not involved in any other case.

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 alleged

contraband i.e. 2500 intoxicant tablets containing Tramadol salt was recovered from the present petitioner. He further submits that the quantity of the recovered contraband is commercial in nature.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 02 years, 11 months and 03 days added with the facts that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate produced today before this Court by learned State counsel; investigation is complete, wherein after framing of charges on 02.05.2025 out of total 16 prosecution witnesses, 03 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.”*

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.

08.05.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No