



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24928-2025
DECIDED ON: 13.05.2025

SHER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

This Court has been knocked with the instant petition which is third in the row under Section 483 of BNSS, 2023 seeking regular bail in FIR No.30 dated 19.03.2024 Under Sections 21/29 of NDPS Act & U/s 10/11/12 Aircraft Act. P.S: Khalra, District Tarn Taran.

2. The case set up by the prosecution could be culled out as per the version of FIR which is reproduced hereinbelow:-

“Officer-incharge, Police Station Khalra. Today, I, ASI along with ASI Hari Singh 895/TT, HC Jagroop Singh 619/TT, PHG Arshdeep Singh 4592, PHG Amarjeet Singh 4621, PHG Major Singh 4540 on Govt. Vehicle No. PB65-BF-1049 which is driven by S/CT Manjinder Singh 173/TT regarding patrolling and searched of bad elements were present on Village Ban Tara Singh then intimation received from BSF Company Commander BOP Dull that a Drone activity has

been done in near about of Village Dull which is required to be searched. That I, ASI along with fellow companions were going for Village Dull then in the way, secret informer stopped our vehicle and give information that just now, a Drone is coming in near about of Village Dull and this Drone is booked by J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran, Davinder Singh son of Sukhdev Singh resident of Maarhi Gohar Singh and Jagroop Singh son of Skattar Singh resident of Manochahal Singh and they searching the Heroin in the fields by parking their vehicle near the Village. I, ASI reached near Village Dull then two young men on seeing the Police party run away on his White Car which was parked near the Stadium of the Village. When, I ASI along with fellow companions reached at the spot then BSF officials also came present at the spot then we saw that a clean shaven young man walking in the fields of Wheat, who on seeing the Police got perplexed and hide himself behind Mango Tree. I, ASI with the help of fellow companions and BSF officials apprehended him and enquired about his name and address, who disclosed his name Jagroop Singh son of Skattar Singh, resident of Manochahal, Police Station Sadar Tarn Taran and on enquiry, he disclosed that he in connivance with J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran and Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh consigned Heroin from Pakistan through Drone, which is lying in the fields and we all three were coming for taking the Heroin. J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran and Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh run away from the spot while driving the Car and I was apprehended by yourself. Upon which, he presented one Mobile Phone Mark Oppo before me and disclosed that this Mobile belong to Davinder Singh and told that if the Heroin be found then informed us. Separate parcel be prepared of recovered Mobile Oppo and I, ASI sealed it with my Seal "SS" and taken into Police custody and sample seal prepared separately, seal after used was handed

over to ASI Hari Singh 895/TT. Jagroop Singh disclosed that the Heroin consigned by all of us from Pakistan through Drone which was not found on lying in the fields. J.P. son of unknown resident of Wan, Police Station Sadar Tarn Taran, Davinder Singh son of Sukhdev Singh resident of Marhi Gohar Singh and Jagroop Singh son of Skattar Singh resident of Manochahal, Police Station Sadar Tarn Taran committed offence u/s 21, 29, 61, 85 of NDPS Act and 10, 11 and 12 of Air Craft Act, 1934 by consigning Heroin from Pakistan through Drone. Ruqa has been sent through PHG Amarjit Singh 4621 to Police Station for registration of FIR. After registration of FIR, case number be intimated. Special Reports be sent and Control Room be informed. I, AST along with fellow companions are busy on the spot for investigation and search is continue.”

3. **Contentions**

On behalf of the petitioner

Mr. Rishu Mahajan, learned counsel appearing for the petitioner would contend that the allegations against the petitioner are based merely on secret information to the effect that drone was seen around village Dhull carrying heroin which belongs to JP, Davinder Singh and Jagroop carrying heroin and all the three above named persons were seen near the village in three vehicles but there is no direct evidence to connect the petitioner with the alleged contraband and is not the source of same and the alleged recovery has been planted upon him. He further derives strength to the argument with effect that there is no connection of the petitioner with the other co-accused persons in any form including call details or other direct or indirect evidence.

He would also question the case putforth by the State asserting that it is highly unbelievable that a person would transport/carry contraband

that too heroin in a transparent polythene bag. It is also submitted on behalf of the petitioner that in any case the recovery of alleged contraband i.e. 50 grams of heroin effected from the petitioner was made after a delay of 11 days.

It is also further contended by Mr. Mahajan that in fact from other co-accused persons the recovery was effected in the following manner:-

Accused name	Quantity recovered	Date on which the quantity was recovered
Jagroop Singh	500 grams	20.03.2024
Parveen Kaur	260 grams	04.04.2024
Kulwinder Singh	100 grams	01.04.2024

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 firstly contended that the petitioner is involved in other identical case of NDPS Act in FIR No.60 dated 22.03.2024, Police Station Jandiala, District Amritsar and has suffered custody of 01 year, 01 month and 04 days only so far. He would further state before this Court that it is incorrect to submit on behalf of the petitioner that the alleged contraband recovered from him is non-commercial in nature since the total recovery of 910 grams of heroin has been effected from all the four accused persons involved in the instant FIR.

It is also pointed that the petitioner was accompanying the other co-accused person namely Jagroop Singh but he ran away from the spot on noticing the police party though Jagroop Singh was arrested at the spot. The main accused Jagroop Singh during interrogation disclosed the name of JP

and Davinder Singh providing information further to the effect that the consigned heroin was lying in the fields thrown via drone from across the boarder and seeks dismissal of the instant petition.

4. **Analysis**

It would be appetite to test the prosecution case scientifically as well as on the basis of prima facie evidence made available before this Court. After having heard the submissions as well advanced on behalf of the respective counsels for the parties, the most effective argument raised on behalf of the State is qua the quantity of alleged contraband i.e. 910 grams being commercial in nature is to be examined in the facts and circumstances involved in the present case. As has been noticed in the arguments raised by the petitioner, the recovery of alleged contraband is neither from the pointed alleged spot in the fields nor from the conscious possession collectively from all the four accused persons.

In fact, at the first instance, main accused Jagroop Singh was arrested from whom 500 grams of heroin was recovered on 20.03.2024 i.e. on the next day of registration of FIR which was on 19.03.2024. Had it been the true case on the part of the prosecution, the alleged recovery from co-accused Jagroop Singh would have been made on 19.03.2024 itself for the reason that according to the FIR he was arrested on the spot by the police party and two other co-accused persons ran away from there whose names were disclosed by Jagroop Singh only later on his disclosure statement as one JP, unknown resident of Wan, Police Station Sadar Tarn Taran and Davinder Singh, resident of Marhi, Gohar. The recovery in itself raises doubt at this stage to be genuine from co-accused Kulwinder Singh and Parveen Kaur, as the recovery was effected on 01.04.2024 and 04.04.2024

respectively i.e. 100 grams and 260 grams and another 50 grams from the present petitioner Sher Singh to which also there is no material produced by the State before this Court in any form connecting all the alleged recoveries from four accused persons to make it a total of 900 grams for the purpose of bringing it within the bracket of commercial quantity.

It has become a routine and new pattern adopted by the authorities for implicating number of persons in one FIR for the reasons best known to them and in most of the cases the recovery is shown in a segregated manner from each of them solely with a view and in an attempt to make out a strong case against the accused persons. There is another aspect to be borne in mind which may raise dent in the story is that it is after a span of 11 days recovery from present petitioner was effected and from other co-accused it was effected on different dates. In such eventuality, the alleged contraband recovered separately from each co-accused persons from different places on different dates cannot be clubbed merely for the purpose of moving it within the slab of commercial nature.

This Court also had the occasion to peruse the disclosure statement given by one co-accused Kulwinder Singh which after translation would read to the following effect:-

“Statement of Kulwinder Singh son of Sukhdev Singh, resident of Marhi Gohar Singh.

In presence of below mentioned witnesses, co-accused Kulwinder Singh made disclosure during his interrogation that his brother Davinder Singh had made loot in the bank and he had come on bail about 5 months ago. He made relations with smugglers in jail and he started business of smuggling by having connived with Sher Singh and Jagroop Singh s/o Sakatar Singh resident of Mannochahal and I also joined this business with them. All three having connived

with one another used to get the cache of heroin from Pakistan through drone and used to handover the cache of heroin to me and I used to take the chache of heroin in Santro car bearing no. PB02AN7008 to the place told by them. On 19.03.2024, they having connived with one another sought the cache of heroin at Village Dhal. All these three had gone to take the chache but after some time Davinder Singh and Sher Singh returned and I was present at home and they told me at home that today Jagroop Singh has been caught by police at the spot and we two have absconded from the spot and you also park the car at someplace and hide somewhere. It may happen that police conduct raid at our home and we both have sent our children and wives to their maternal home and I have hidden the car Santro in Pahuwind Colony at Bhikhiwind, only I know about it. I can get it recovered by doing demarcation. Its disclosure memo has been prepared.”

A perusal of the above crystallizes the fact and the discussion made hereinabove and stands corroborated from the disclosure statement of Kulwinder Singh itself, the name of the petitioner came into picture in this disclosure statement for the first time on 30.03.2024 and not on 19.03.2024 when the main accused Jagroop Singh was arrested from the spot. This is another factor to which this Court is in disagreement for the simple reason that if the petitioner was a part of the group of four accused persons, main accused Jagroop Singh should have disclosed his name as well at the time of his arrest immediately at the spot but the date of arrest of Jagroop Singh is also doubtful because FIR is dated 19.03.2024 which has recorded his arrest from the spot itself by the police party but recovery is shown on 20.03.2024 i.e. the next day.

It seems that the police party was under some obligation to implicate more and more people especially those who might have been involved in drug peddling at one point of time or were involved in other cases facing trial in an endeavour to their slogan i.e. 'Ek Yudh Nashe Ke Virudh' to make State drug free.

This Court must appreciate the efforts and the intent of the State authorities but that needs to be in right earnest with clear intent and not with biased and unfair means to achieve some targets in numbers.

As per the custody certificate, the stage of trial is stated to be of prosecution's evidence wherein after framing of charges on 21.09.2024 only 02 witnesses have been examined out of total 13 Pws i.e. to say in the last almost 08 months by now, which is an indication that the trial will take long time to conclude and same cannot be assessed as to how long it may continue.

The petitioner has incarcerated 01 year, 01 month and 04 days by now from whom if taken individually the alleged recovered contraband is 50 grams heroin (non-commercial in nature) and the other case in which the petitioner is involved he is on bail.

Otherwise also involvement of the petitioner in any other FIR would not be a predicament for this Court to grant bail in the instant FIR as is the dictum laid down 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.

This Court is sanguine of the proposition that right to speedy trial is also available to an accused as envisaged under Article 21 of the Constitution of India along with the principle that 'bail is rule' and 'jail is an exception' and on that account the trial will take reasonably long time and for that the accused cannot be detained behind the bars for an indefinite period because his guilt has not been proved so far and is only an accused till date. Therefore, the cardinal principle of criminal law that is 'presumption of innocence' weighs in his favour.

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:**

Considering the above said discussion along with the facts and circumstances as has been unfolded, this Court is of the view that as of now the alleged recovery effected from the petitioner i.e. 50 grams of heroin is non-commercial in nature and too on different date and from different place than that of main accused Jagroop Singh, who has suffered reasonable custody of 01 year, 01 month and 04 days, it would be unfair to retain him in custody till the conclusion of trial for which no satisfied time can be

assessed by this Court at this stage. This petition deserves to be allowed. Accordingly, 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.

13.05.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No