

2025:PHHC:061194



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CRM-M-23826-2025

DATE OF DECISION: 08.05.2025

SALINDER SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to petitioner in FIR No. 125, dated 28.08.2021, under Sections 22 and 29 of NDPS Act, 1985, registered at Police Station City Batala, Police District Batala, Gurdaspur.

2. Facts

“Statement of ASI Sucha Singh No.2145/BTL, CIA Staff Batala. Stated that I am posted at CIA Staff Batala. Today myself ASI along with Rashpal Singh 2256, ASI Anil Kumar 3898, CT Gagan Sharma 1067/PTK, CT Lovepreet Singh 3367, CT Amanpreet Singh 2239/BTL were going on Government vehicle No. PB-06-AK-1609 being driven by CT Amanpreet Singh 2239/BTL for patrolling and search of bad elements from Lakarmandi Batala towards Sukha Singh Chowk, Batala along the Hansli. When the police

party was some distance short of Bohari Mandir, then 2 persons with shorn hair were seen coming on foot from Sukha Singh Chowk, Jalandhar Road side. One of them was holding a black polythene bag. On seeing the police party, they got perplexed and tried to run backwards. However, they were apprehended by me/ASI with the help of police party. On inquiry, the person holding the polythene bag disclosed his name as Rajinder Singh son of Sham Singh resident of Datarpur. The other person disclosed his name as Salinder Singh son of Harjeet Singh resident of Datarpur. Since is suspected that the polythene bag held by Rajinder Singh above said contains some intoxicant so I asked the Head Munshi Dilbagh Singh to send some regular NGO on the spot, upon which you have reached the spot with the police party the persons apprehended by me have been produced before you and the polythene bag has also been produced before you. Required legal action be taken against them. Statement has been got recorded, has been heard, is correct. Sd/- ASI Sucha Singh. Attested Sd/- Harjeet Singh SI, PS City Batala. Dated 28.08.2021. Police Proceedings: Today myself SI along with ASI Manjinder Singh No.2206/BTL, CT Jaswinder Singh 1545/BTL was present in the police station that Head Munshi ASI Dilbagh Singh received a phone call that ASI Sucha Singh along with police party has apprehended 2 persons near Bohari Mandir, Batala and they are suspected to have some intoxicant, so reach the spot for necessary action. Upon this, myself SI along with police party, laptop and printer reached near Bohari Mandir, Batala on private vehicle. At this, ASI Sucha Singh along with police party and suspects were found present, who got his above said statement recorded to me, which was read over to him and he signed under the same in Punjabi after accepting it to be correct, which attested by me. Out of them, the person holding the polythene bag

disclosed his name as Rajinder Singh son of Sham Singh while the other person disclosed his name as Salinder Singh son of Harjeet Singh. Before checking the polythene bag held in the hand of the accused, effort was made to join some public witness in the police party, but nobody got ready. Upon this, myself SI in the presence of police party checked the polythene bag held in the right hand of Rajinder Singh, from which 900 loose white-coloured tablets were recovered, which were put in a plastic box and a parcel was prepared which was sealed with my seal HS. Sample seal was prepared separately and form 29M was completed and were taken into police possession vide separate memo. Seal after use was handed over to ASI Manjinder Singh 2206/BTL. Since accused Rajinder Singh and Salinder Singh have kept 900 loose white intoxicating tablets in their possession, so they have committed offence under Section 22 NDPS Act. Upon this, statement is being sent by hand through CT Lovepreet Singh to police station for registration of FIR. After registration of case, FIR number be intimated and special reports be sent to the officers concerned and control room be informed on wireless. Myself SI along with police party is busy in investigation on the spot. Sd/- Harjeet Singh SI, PS City Batala dated 28.08.2021. Today in the area of Bohari Mandir, Batala at 3.50 PM.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the he has been falsely implicated in the instant FIR, as nothing has been recovered from his conscious possession. He further contends that the alleged contraband i.e. 900 loose intoxicating tablets have been recovered from the co-accused namely Rajinder Singh, who belongs to the village of the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According, to the said custody certificate the petitioner has suffered incarceration for a period of 9 months and 15 days, as of now.

Learned State Counsel is not in a position to controvert the afore-said facts.

4. **Analysis**

Be that as it may, considering the fact that nothing has been recovered from the conscious possession of the petitioner added with the facts that the petitioner has suffered incarceration for a period of 9 months and 15 days, as of now wherein, the conclusion of trial would take considerable time, as out of total 8 prosecution witnesses only 2 have been examined despite completion of investigation and presentation of challan before the trial Court on 21.08.2023, this Court is of the considered opinion 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 “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-

conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

5. RELIEF:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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

08.05.2025

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