



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24986-2025
DECIDED ON: 13.05.2025

DEEPAK ALIAS DEEPU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karandeep Singh Sidhu, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the third time under Section Section 483 of BNSS [Bharatiya Nagarik Suraksha Sanhita] 2023 for grant of bail pending trial/ Regular Bail to the petitioner in FIR No. 15 dated 29.01.2024 registered under Sections 21/29/61/85 of Narcotic Drugs and Psychotropic Substance Act, 1985 at P.S. Mataur, District SAS Nagar (Mohali) (Annexure P-1), in the interest of justice.

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

“Original Copy of Ruqa, "Station House Officer P S. Mataur Jai Hind. Today, I SI along with ASI Sandeep Singh No. 518/SAS Nagar, C/2 Jujhar Singh No. 07/SAS Nagar, C-2 Harpal Singh No. 1521/SAS Nagar and C Roban Anand No.1983/SAS Nagar were patrolling on a

private vehicle make Scorpio which was being driven by C Gurpreet Singh No. 97/SAS Nagar along with laptop, printer and Investigating kit and were patrolling in search of bad and suspicious elements and were present near Chawla Chowk Mohali and the time would be around 7,30 PM, then a secret informer came before me and informed me that Rajwinder Singh alias Raju son of Mahant Ganga Parkash resident of Ram Mandi P.S. Rama Mandi District Bathinda, Deepak alias Deepu son of Prilpal resident of Kotli Road, Teja Wal Street. P.S. City Mukisar District Sr Muktsar Sahib and Sunil Kumar son of Late Ashok Kumar resident of Village Guru Har Sahai P.S. Guru Har Sahai District Ferozepur and all of them are indulged in the business of selling heroin. Even now they on their car bearing registration no. HR 26 BL 7417 make Chevrolet Captiva color white and they by travelling on it from 3/5 Chowk and from there they are coming lo Chawla Chowk If by making a plan a Nakabandi is being done, then the above said persons can be apprehended with heroin. The information being correc and reliable. Rajwinder Singh alias Raj. Deepak alias Deep and Sunil Kumar for doing the business of heroin have committed an offence under Section 21, 29/61/85 NDPS Act. After registering the ruqa against the above said persons, the same is being sent to police station at the hands of C/2 Harpal Singh No. 1521/SAS Nagar. After registering the FIR, the number of the file may be intimated. Senior officers and control room may be intimated. Special reports may be prepared. Report under Section 42 NDPS Act and after preparing it, the same be sent to Senior Officers through the hands of C Roban Anand No. 1983/SAS Nagar. I Sl along with other police officials are present at the Nakabandi and are doing the investigation.:

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 nothing has been recovered

from his conscious possession. He further contends that the alleged contraband i.e. 260 grams of heroin was recovered from the alleged vehicle, wherein the petitioner was sitting adjoining to driver's seat and the said contraband is marginally over and above the commercial quantity. A debatable issue has been raised in the present petition regarding non-compliance of Section 42 of NDPS Act, as the alleged recovery of the contraband took place after sunset, and no separate *zimni* to that effect was recorded by the Investigating Officer.

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 petitioner is a habitual offender as he is involved in four other cases. He further submits that 260 grams of heroin was recovered from the alleged vehicle, wherein the petitioner was sitting adjoining to the driver's seat.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 01 year, 03 months and 10 days added with the facts that the quantity of alleged contraband is marginally over and above the commercial quantity; nothing has been recovered from the conscious possession of the petitioner as whatever was recovered that was from the alleged vehicle; investigation is complete, wherein after framing of charges on 05.07.2024 out of total 09 prosecution witnesses, chief-examination of 02 witnesses have been recorded, 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.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. *Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022* decided on 04.04.2022, *Pardeep Singh versus State of Punjab, CRM-M-46244-2022* decided on 19.01.2023, *Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)* decided on 11.11.2022, *'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)'* decided on 19.01.2022, *'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020*, decided on 27.08.2020, *Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021*, decided on 31.08.2021, *Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021*, decided on 27.01.2021, *Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh* decided on 26.02.2020, *Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023'*, and *Vivek Watts versus State of Punjab, CRM-M-13791-2022* decided on 15.02.2023.

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.

13.05.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No