

2025:PHHC:065306



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

**CRM-M-25568-2025 (O&M)
DECIDED ON: 15.05.2025**

KAMLESH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Jagdish Singh Mahal, Advocate
 for the petitioner.

 Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

 This is the second petition filed by the petitioner for grant of regular bail in FIR No. 39, dated 09.04.2024, under Sections 21(c), 27(a) and 29 of NDPS Act, 1985, registered at Police Station Sadar Gurdaspur, District Gurdaspur.

2. **Facts**

 The brief facts of the present case, as narrated in the FIR reads as under:-

“Statement of ASI Sarabjit Singh 175 Naka Incharge Babri Bye-pass, Gurdaspur, Police Station Sadar Gurdaspur, Mobile no.98154- 56382, stated that I alongwith ASI Satwinder Mash 03, ASI Surinder Singh 746, after barricading at Naka Babri Bye-pass, were checking strictly cars coming as per daily routine then one car no.PB-06AM-7877 mark I20 colour white

was coming from Batala side. I ASI with the help of search light signalled to stop for checking and driver on seeing the police party suddenly reversed the car and backside of car hit with barricade. The driver of the car after stopping the car after opening door of his side ran away. Upon which I ASI alongwith other companions apprehended car no.PB-06AM- 7877 mark I20 colour white and the driver who ran away was chased by other companions but due to dark at night car driver ran away and not met. There was women sitting on the seat alongwith driver and one female was sitting on the rear seat and there was suspicion that they were having intoxicant tablets or any other objectionable material. Upon which I from my mobile no.98154-56382 called night munshi ASI Shinda Mash 1165, Police Station Sadar Gurdaspur on his mobile no.94151-03568 and requested to send investigating officer. Upon which you have come on the spot. Action be taken. Sd/- Sarabjit Singh ASI Naka Incharge Babri, Gurdaspur, police station Sadar Gurdaspur dated: 09.04.2024, attested Sd/ - Harjit Singh ASI Police Station Sadar Gurdaspur dated 09.04.2024. Police Proceedings:- Today I ASI was present police station that night munshi ASI Shinda Mash 1165, Police Station Sadar Gurdaspur told me that ASI Sarabjit Singh 175 Naka Incharge Babri Bypass Gurdaspur alongwith police party at barricading have apprehended two women alongwith car bearing no.PB-06AM-7877 mark 120 colour white suspicion that they have some intoxicant or objectionable material and to proceed after reaching the spot. Upon which I ASI ASI Malkit Singh 194, ASI Bakshish Singh 933, L/Constable Gurpreet Kaur 27/231, S/CT Ravinder Singh 78 on private car alongwith laptop printer, search light reached at spot where ASI Sarabjit Singh 175 informed me about car no.PB-06AM- 7877 mark I20 colour white and two women sitting at which was marked on the side of barricade. With the help of L/CT Gurpreet Kaur 27/231 alighted ladies sitting in car and I ASI told them my name,

rank, posting and asked their name. the lady sitting alongside driver told her name as Kamlesh wife of Vishal resident of Paniar, Near Nabha Dass Mandir, police station Dinanagar, District Gurdaspur and the lady sitting near driver namely Kamlesh informed that the person who have ran away from the car is Vishal son of Ashok Kumar resident of Paniar, Near Nabha Dass Mandir, police station Dinanagar, District Gurdaspur and is her husband. I ASI asked them that search is to be made of car and them and they have legal right to get conducted their search from some Gazetted Officer or Magistrate and who can be called at the spot. Notice under section 50 NDPS Act was issued. They said that they have full believe on us and you can conduct search of the car. Consent memo of both women were prepared. Before conducting search of car police party 10 tried to join public witness but due to dark everyone told his helplessness and refused to join the police party. Upon which I ASI in the presence of companions employees started search of car and during search two black colour polythene bags were recovered from dashboard of the car and upon checking from one polythene heroin was recovered and upon weighing on computer weighing machine same was came to be 255 grams of heroin alongwith polythene bag. The same was put in plastic box and parcel was prepared and seal H.S. was stamped and same was taken into possession vide memo and from second black polythene bag upon checking Indian currency notes were recovered which were total 59 notes of 200/-total 11,800/- and 52 notes of 100/- total 5200/- and total amount of Rs. 17,000/- Indian currency was recovered. In regard to recovered Indian Currency ladies were asked upon which they said that this money is earned after selling heroin. The recovered Indian currency i.e. drug money amounting Rs. 17,000/- was put in plastic box and different parcel was prepared and same was sealed with stamp H.S. and vide different recovery memo taken into police possession. Sample

stamp bearing word H.S. was prepared and stamp was handed over to ASI Malkit Singh 194 and car no.PB- 06AM-7877 mark I20 colour white was taken into police possession. Accused Kamlesh wife of Vishal resident of Paniar, Near Nabha Dass Mandir, Police Station Dinanagar, District Gurdaspur, Reena wife of Sunny resident of Paniar, Near Nabha Dass Mandir, Police Station Dinanagar, District Gurdaspur and Vishal son of Ashok Kumar resident of Paniar, Near Nabha Dass Mandir, Police Station Dinanagar, District Gurdaspur have committed offence under section 21 (c), 27(a)-61/85 NDPS Act by keeping in possession 255 gram heroin alongwith polythene bag and Rs.17,000/- Indian Currency as drug money. After recording statement S/CT Ravinder Singh 78 is sent to police station for registration of FIR. Number be informed after registration of FIR. Special reports be issued to Illaqa Magistrate and officer. Control room be informed through wireless. After preparing report under section 57 of NDPS Act is sent to officers. I ASI alongwith companions are busy at the spot for investigation. Sd/- Harjit Singh ASI, Police Station Sadar Gurdaspur, dated: 09.04.2024.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He further contends that 255 grams of Heroin stands effected from the petitioner, which is marginally above the commercial quantity.

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 she is also involved in other cases of similar nature.

4. **Analysis**

Be that as it may, considering the custody period i.e. 1 year 1 months and 2 days for which the petitioner has suffered incarceration added with the facts the petitioner is a lady having 3 year child; the recovery i.e. 255 grams effected from the petitioner is marginally over and above the commercial quantity apart from that in the present case investigation is complete and after framing of charges on 16.11.2024, out of total 16 prosecution witnesses none has been examined so far, which is suffice for this Court to infer that the conclusion of trial would take considerable time for which the petitioner cannot be detained behind the bars for an 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 the 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.

15.05.2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No