

2025:PHHC:072771



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

**CRM-M-26448-2025
DECIDED ON: 27.05.2025**

SUKHPAL SINGH @ SUKHA @ SAMBER

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Parminder Singh Sekhon, Advocate and
Mr. Rajdeep Singh Gill, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked 2nd time by the petitioner for grant of regular bail in FIR No. 74, dated 19.06.2024, under Sections 15-C, 27 and 29 of NDPS Act, 1985, registered at Police Station Nehianwala, Bathinda.

2. Facts

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

“Station House Officer, Police Station Nehianwala. "Fateh". Today I, ASI along with ASI Jarnaiol Singh 1172/Bathinda, ASI Kamaljot Singh 978/Bathinda bringing laptop, printer and investigating kit, along with HC Vikramjeet Singh 1380/Bathinda, SCT Balwinder Singh 1028/Bathinda, SCT

Amandeep Singh 2176/Bathinda in government vehicle Bolero bearing registration No. PB-03R-3296 driven by CT Inderjeet Singh 1461/Bathinda accompanying CIA Staff-2, Bhatinda was patrolling in search of suspicious persons were going from Kucha Mandi Nabara Har Raipur through Main Road Bhatinda Bajakhana to Village Zeeda. When the Police party reached behind 500 meter from Kaka Di Family Dhaba at Khera, then time would be around 07:20 PM at the left side of the road, a tractor make Eicher color red-white fitted with trolley standing at wrong side of the road with loaded was seen the mouth of which was toward Bhatinda. The body of the trolley was covered with a white color tarpaulin. And towards the dalla the tarpaulin was bending. On the side of the trolley and on the side of the Dala, one clean shaved person was standing on the trolley and was placing the bundles hare and there. Who was perplexed after seeing the police party and tried to hide himself. Then I, ASI on the basis of suspicion immediately stopped our vehicle, alighted from the vehicle and other staff members went near the trolley, alighted the man from the trolley and with the help of other staff employees arrested the man and asked his name and address. Who disclosed his name as Kuldeep Singh alias Keepa son of Malkeet Singh son of Nand Singh resident of Village Zeeda, Police Station Nehinyawala, District Bhatinda. In the meantime, Balkaran Singh son of Kaku Singh resident of Village Zeeda, District Bathinda who was coming pedestrian included in the police party. He was informed about situation of the occurrence. Then I, ASI, following the instruction under Section 50 NDPS ACT, told the said accused Kuldeep Singh alias Keepa that "I, ASI Gurpreet Singh No. 1010/Bathinda, CIA Staff-2, Bathinda is working as a Investigating Officer. I am a police officer, wearing my uniform, and my name plate is attached on my uniform and rank insignia is affixed as identification mark. The plastic loaded in the tractor trolley in your possession seems to have some narcotic substance in it, so

you and the plastic in your possession have to be searched under the Narcotic Substances Act, but you have the legal right to get searched yourself and the plastic bundles in your possession by a Magistrate or a Gazetted officer who can be called at the place of occurrence or you can be brought at before them. Accused Kuldeep Singh alias Keepa expressed his disagreement and said that the plaster loaded in the tractor trolley in my possession wants to be searched by a Gazetted Officer or Ilaqa Magistrate. Upon which dissent notice was prepared under section 50 of NDPS Act to the accused. On the memo signature of the accused Kuldeep Singh alias Keepa was got done and signature of the witness also got done. Then I, ASI time at 08:05 PM called from my mobile number to Control Room Bhatinda at Mobile No. 75080-18100 and requested to send a Gazetted Officer or a laga Magistrate at the place of occurrence for investigating the case. Then at about 09.45 PM Sh. Pritpal along with his staff employees in government vehicle Bolero bearing registration number PB 65 AX 5416 reached at the place of occurrence. Who were briefed about the situation, accused Kuldeep Singh alias Keepa and the plastic bundle kept in his tractor-trolley was presented before him. DSP Sahib asked the accused his name and address then the accused person disclosed his name as Kuldeep Singh alias Keepa son of Nand Singh resident of Village Zeeda, Police Station Nehinwala, District Bathinda. After that DSP Pritpal Singh as per notice under Section 50 apprised himself to the accused that I, DSP Pritpal Singh is posted at District Bhatinda. I am a Gazetted Officer of Punjab Government. I am in uniform, and my name plate is attached on my uniform and rank insignia is affixed as identification mark. The plastic loaded in the tractor trolley in your possession seems to have some narcotic substance in it, so you and the plastic in your possession have to be searched under the Narcotic Substances Act, but you have the legal right to get searched yourself and the plastic bundles

in your possession by a Magistrate or a Gazetted officer who can be called at the place of occurrence or you can be brought at before them. On which the accused Kuldeep Singh alias Keepa said that I have full faith on you, you can get me searched and the plastic bundles kept in trolley as per the instructions and consent notice under Section 50 NDPS ACT was prepared. Notice of consent was read and heard, who heard, accepted and found it to be correct, put his signature on the memo of consent and witnesses also put their signature on the memo. Then I, ASI on the basis of instructions given by the said DSP Sahib, unloaded the plastic bundles/ bags kept trolley in the possession of the said accused and checked it one by one then from the same poppy husk was recovered. That on weighment 36 of the bags of white coloured containing poppy husk was recovered the weight of which on computer weighing scale 35 weighted 14 kgs including the weight of the bag and 1 of them weighed 10 kgs including the weight of the bag. Total weight of the same came out to be 500 kgs. The recovered poppy husk was kept in the same bags and the mouth of the same was tied with the rope and 36 parcels were prepared and the same were marked as Sr. No 1 to 36 and the said parcels were sealed with the seal impression "GS". The said seal was then sealed by the DSP with his seal impression "PS". The sample seal was prepared separately and the DSP endorsed the said sample seal. That the DSP kept the sample seal in his own possession and the ASI after the use of sample seal handed over the same to private witness Balkaran Singh but he gave an excuse for the same and the said sample seal was handed over to ASI Jarnail 1172/Btn. Then the ASI took the tractor Make Essar and on checking the same from which no document in regard to the ownership was recovered. On checking the tractor, the chasis no. 919611168176 and engine no. 519529184158 was noted. Then the recovered 36 bags of poppy husk with impression GS/PS along-with sample seal and the

tractor was taken into police possession by way of separate memo in presence of witnesses and the same was endorsed by the DSP also. The ASI as per the directions of the DSP conducted the search of accused, on which no other intoxicant material was recovered. The accused Kuldeep Singh @ Keepa's jama talasi was performed and from the lower worn by the accused from the pocket one Mobile Phone Touch Screen Make Vivo having mobile no. 94785-09305 and another mobile phone make "OPPO" black in coloured having sim no. 89682-35986 is working and from his possession Rs 100/- was recovered. The recovered mobile phone were taken into police possession vide separate memo which was signed by the accused in the presence of the witnesses and the DSP endorsed the same. The accused Kuldeep Singh @ Keepa has kept in his possession 500 kgs of poppy husk and has not shown any permit or license for keeping the said contraband in his possession. The accused Kuldeep Singh @ Keepa has committed the offence under section 15(c), 61, 85 of the NDPS Act. Therefore ruqa is being sent against Kuldeep Singh @ Keepa under sections 15(c), 61, 85 of the NDPS Act is being sent through SCT Balwinder Singh 1028/BTD is being sent to Police Station Nahiana Wala, District Bathinda. The number of the FIR be intimated after registration of the same. The high officials and DCR Bathinda be intimated. Special Reports be prepared. I ASI along-with other police officials are present at the spot. SD/- ASI Gurpreet Singh ASI/1010/BTA CIA Staff-2, Bathinda dated 19.06.2024 Mobile No. 94638-69370 in the area of Main Road Bathinda Bajakhana near Kake Da Family Dhaba, Village Zeeda, AT 3:00 AM. On receipt of the complaint, FIR against the accused is registered. After going completed the record. Information is being sent to DCR Bathinda. Copies of the FIR along with special reports are being prepared and the same are being sent to the services of llaga Magistrate and higher officials through PHG Jagseer Singh 21323. Original complaint along-with

copies of FIR is handed over to SCT Balwinder Singh 1028/Bathinda as per instruction to be given to ASI Gurpreet Singh. ”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has not been named in the FIR and was later implicated solely as a supplier under Section 29 of the NDPS Act, 1985. However, no recovery was made from him at the time of his arrest by the police.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner in Court today, which has been taken on record. He opposes the present petition, arguing that a recovery of 510 kg of poppy husk was made from the co-accused, which falls within the category of commercial quantity. Furthermore, during the course of investigation, links have been established between the petitioner and the co-accused from whom the recovery was effected. It is also submitted that the petitioner is a habitual offender, as he is involved in other criminal cases as well, which is evident from the custody certificate

4. **Analysis**

Be that as it may, considering the period of custody already undergone by the petitioner, i.e., 8 months and 9 days, and the fact that no recovery was made from his conscious possession, coupled with the circumstance that since the framing of charges on 04.01.2025, none of the 18 prosecution witnesses has been examined, it is sufficient for this Court to conclude that the trial is likely to take a considerable amount of time. In such

a situation, the petitioner cannot be kept incarcerated 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.

27.05.2025
sham

(SANDEEP MOUDGIL)
JUDGE

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