



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27026-2025
DECIDED ON: 22.05.2025

SUNIL KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the second 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 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 while referring to the contents

of the FIR, which does not disclose as to whom the car belongs and who was driving the car at the time it was intercepted and the alleged recovery was effected by only mentioning the registration number of the car i.e. HR-26-BL-7417 but there is no fact disclosed as to who was driving the car at that stage except, recording in the FIR that three person namely Rajwinder Singh @ Raj, Deepak @ Deepu and Sunil Kumar were doing the business of heroin who have committed offence under Sections 21, 29 of NDPS Act. It is also not very clear from the FIR regarding the exact location of the recovery and the specific spot from which the alleged contraband was seized. He further submits that the quantity of alleged contraband i.e. 260 grams of heroin is marginally over and above the commercial quantity. Co-accused namely Deepak @ Deepu and Rajwinder Singh have already been granted the concession of regular bail by this Court vide orders dated 13.05.2025 (Annexure P-10) and 21.05.2025, passed in CRM-M-24986-2025 and CRM-M-26817-2025 respectively.

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 is also in consonance with the said fact since the FIR and the investigation as well as the instructions provided to him by pervi report is also stated to be silent on that fact. Though seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in six other cases.

4. Analysis

Be that as it may, this Court having gone through the FIR with the able assistance of learned State counsel, could not find out the assertions

made by learned counsel for the petitioner to be incorrect and considering the custody period undergone by the petitioner i.e. 01 year, 03 months and 19 days added with the facts that quantity of alleged contraband i.e. 260 grams of heroin is marginally over and above the commercial quantity; co-accused namely Deepak @ Deepu and Rajwinder Singh have already been granted the concession of regular bail by this Court vide orders dated 13.05.2025 (Annexure P-10) and 21.05.2025, passed in CRM-M-24986-2025 and CRM-M-26817-2025 respectively; investigation is complete, wherein after framing of charges on 05.07.2024 out of total 9 prosecution witnesses, none has been examined so far, 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.”*

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 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.

22.05.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No