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2025:PHHC:070306



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27656-2025
DECIDED ON: 23.05.2025

RISHABH SHAHI ALIAS RISHU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 138 dated 11.08.2022 registered under Section 21, 22 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Bhargo Camp, District Jalandhar (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“Today I ASI along with HC Rakesh Mohan 3439, C/2 Jasbir Singh 1893, SR/Ct. Parjinder Singh 1312 and L/Ct. Binni Kumari 1915 along with laptop and printer were patrolling and checking in search of bad and suspicious elements on our private vehicle and were present in the area of police station and when the police party during

patrolling was going from factory Kha Mandi Chowk to Nakha Wala Bagh and when the police party reached near the turn of Mohalla AS Villa Colony, then from AS Villa Colony one Activa no. PB 08 ES 6477 color black which was being driven by one person and besides him one lady was sitting and both of them were coming on the road. When the Activa reached the turn of AS Villa Colony, then on seeing the police party the person who is driving the activa said something to the lady who was sitting behind him and then the lady who was sitting behind the Activa threw the black color polythene which she was carrying in her right hand in the empty plot and in the meantime the driver of the Activa tried to turn the Activa backwards but I ASI caught hold the said person along with the other police officials and asked them about their name and address. The driver of the Activa disclosed his name as Rishab Shahi alias Rishu son of late Deepak Shahi resident of House no. 133-C Near Liquor Shop New Dashmesh Nagar Jalandhar as tenant of Om Parkash House no. 03 AS Villa Colony near Doly Palace Jalandhar and in the presence of L/CT the lady who was sitting on the back of the Activa disclosed her name as Rama wife of Harjinder Singh alias Jindi resident of House No. 12 New Dashmesh Nagar, Jalandhar. To the apprehended person/lady, I ASI disclosed his name, rank and place of posting and told them that I am ASI Raghuvir Singh and I am posted as Investigating officer at Police Station Bhargo Camp, Commissionerate Jalandhar and I am having suspicion that the black polythene which has been thrown by you needs to be searched, but you are having the legal right that you can get the black colour polythene search done from the Gazetted Officer or a Magistrate and after arrangements they can be called at the spot. Then the person apprehended namely Rishabh Shahi alias Rishu and Rama told that they are having faith in the investigating officer and the black color polythene which they are thrown can be searched by you. On this at the spot ASI prepared the consent memo and complied with the conditions of Section 50 of NDPS Act. Then before checking the black color polythene which was thrown by accused Rama, efforts were made to join the independent witness

from public, but everyone showed their helplessness. Then ASI in the presence of other police officials checked the black color polythene thrown by accused Rama and after picking and on checking the said polythene two transparent polythene was recovered out of which in one polythene heroin was there and in the second transparent polythene intoxicant substance was recovered. After making the arrangements of the electronic weighing machine and the recovered heroin along with polythene was being weighed and the weight of the same came out to be 45 gram and the weight of the intoxicant substance along with polythene came, out to be 275 gram. After making the arrangement of the plastic box the recovered Heroin and intoxicant substance were put in a separate-2 boxes and a parcel of the piece of cloth was prepared and on the said parcel I ASI affixed my seal as RS. After affixing the seal, the same was handed over to HC Rakesh Mohan 3439. The recovered heroin and intoxicant substance were taken into police possession vide separate recovery memo. Then I ASI who caught hold the persons namely Rishabh Shahi alias Rishu and Rama for keeping in their possession heroin and intoxicant substance and asked them to produce any licence or permit, accused Rishabh Shahi alias Rishu and Rama could not produce any licence or permit for keeping in their possession heroin and intoxicant substance. By doing so they have committed the offence under section 21, 22, 61, 85 NDPS Act. After registering the Ruqa the same is being sent to the police station through Sr/CT Parjinder Singh 1312 for registering the FIR. Number of the FIR be informed after registering the same. Special reports be prepared and sent to Illaqa Magistrate. Senior Police officials and control room may be intimated through wireless. I, ASI along with other police officials am busy with investigation at the spot. Today in the area AS Villa Colony Turn Nakha Wala Bagh Road, At 6.35 PM. Sd/- Raghubir Singh ASI 1349/P.S. Bhargo Camp Commissionerate Jalandhar dated 11.08.2022.”

3. Contentions:**On behalf of the petitioner**

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He further submits that the recovery memo dated 11.08.2022 bears the number of FIR already typed in Punjabi. He asserts that the co-accused Rajvir Singh @ Nannu has already been granted the concession of regular bail by this Court vide order dated 13.04.2023 (Annexure P-4) passed in CRM-M-16405-2023.

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year 6 months and 30 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that though recovery of contraband i.e., 45 grams of heroin is non-commercial in nature but 270 grams of intoxicant powder containing 'Alprazolam' in the present case is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. Analysis

Be that as it may, considering the fact that the recovery memo dated 11.08.2022 bears the number of FIR already registered typed in Punjabi, which is highly improbable and cannot be believed its authenticity, it casts a shadow over the genuineness of the recovery. The presence of such details at the time of the alleged recovery suggests either a false implication or that the documentation was prepared subsequently, without adhering to the due process of law. Moreover the petitioner has already suffered incarceration of 1 year, 6 months and 30 days and is

is a person of clean antecedents; co-accused has already been granted the concession of regular bail by this Court vide order dated 13.04.2023 (Annexure P-4) added with the fact that investigation is complete, challan stands presented on 14.02.2023, and out of total 12 prosecution witnesses, three have been examined and one has been given up. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 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

23.05.2025
Meenu

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