

2025:PHHC:070309



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27668-2025
DECIDED ON: 23.05.2025

HARASH BAJAJ

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sarbjit Singh Grewal, Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No. 58 dated 20.08.2023 under Sections 18 of NDPS Act, 1985 (Section 25 of NDPS added later on), registered at Police Station Mehna, District Moga.

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

"Officer Incharge of Police Station Mehna "Fateh". Today the undersigned ASI along with ASI Manpreet Singh No. 1024/Moga, C-II Lovejeet Singh No. 765/Moga on government vehicle no.PB- 08-AY - 2800 Bolero being driven by S/CT Davinderpal Singh 1201/Moga, were present near Bus Stand village Talwandi Bhangarian on

patrolling and search of dubious persons then the special secret informant met and gave information to the undersigned ASI that Vikas Sehrawat son of Prem Sehrawat resident of Badh Malk Tehsil and District Sonipat and Harsh Bajaj son of Jaspal Bajaj resident of Chaml, District Sirsa, Haryana are doing business of selling opium. Today, they are going ahead from Moga passing through the villages on Dusanjh Road in Verna Car bearing no. HR-08-V-0017 white color. If the check post / naka bandi is held on appropriate place then they both can be apprehended along with heavy quantity of opium. The information being concrete and reliable, by doing such act, above said Vikas Sehrawat and Harsh Bajaj have committed offence under section 18-61-85 NDPS Act. Hence, the document was written against Vikas Sehrawt son of Prem Sehrawt resident of Barh Malk, Tehsil and District Sonipat and Harsh Bajaj son of Jaspal Bajaj resident of Chaml District Sirsa Haryana and is being sent through ASI Manpreet Singh 1024/Moga to the police station for registration of case. After registering the case, case number may be informed. Special reports may be issued, PCR Moga and Senior Officers may be informed. As per instruction of Hon'ble Punjab and Haryana High Court Chandigarh, telephonic call was made to SCT Rajpal Singh Munshi CIA Staff Baghapurana for sending some regular NGO for further investigation, who told that ASI Sukhwinder Singh 490/Moga is being sent on the spot for further investigation.

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner seeks parity with co-accused Vikas Sehrawat, who was granted the benefit of regular bail by this Court vide order dated 29.04.2025, passed in CRM-M-21096-2025 (Annexure P-5). He further submits that although the trial is at the fag end as all PWs stands examined but the trial Court has yet to pronounce the final judgment.

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 9 months. He does not controvert the fact that the petitioner is at par with the co-accused Vikas Sehrawat.

4. Analysis

Considering the facts that the petitioner has already suffered incarceration of 1 year, 9 months and is a person of clean antecedents; similarly situated co-accused has already been granted the concession of regular bail by this Court vide order dated 29.04.2025, passed in CRM-M-21096-2025 (Annexure P-5) added with the fact that trial is at the fag end, 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*”, 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.”

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.

23.05.2025
Meenu

(SANDEEP MOUDGIL)
JUDGE

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