

2025:PHHC:073665



224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28870-2025
DECIDED ON: 28.05.2025

SANJAY

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. K.L. Saini, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

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. 142, dated 17.07.2024, under Section 20 of NDPS Act, 1985, registered at Police Station Pillukhera, Jind.

2. **Facts**

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

“To, The SHO P.S. Pillukhera, Jai Hind. Today I ASI alongwith HC Sandeep Kumar 413, EHC Satish Kumar 665, constable Joginder Singh 489, SP Sandeep Kumar 917 in a passenger vehicle no. HR 31 GV 4152 driver SPO Sandeep Kumar 563/HAR was present at Bus Stand Bhambheva for the patrolling and investigation of criminals. That the secret informer meet me and gave information that Sanjay son of

Rampal resident of Morkhi and Bijender son of Pirthi resident of Ludana is doing work of selling intoxicating substance. That today both of them are standing on the road near water supply Tank Bhambheva with the intention of bringing a large quantity of Narcotic from somewhere and selling the same. If an immediate raid is conducted, they can be caught with a large quantity of Narcotic. The information given by the trustworthy person, on which I ASI after giving the proper instructions to the informer, prepare a separate notice for information under section 42 of the NDPS Act and got the report registered alongwith the daily diary, sent EHC Satish Kumar 665 to the police station Pillu Khera. The ASI Informs his fellow employees about the information and prepared a raiding party and when the vehicle reached near the informed place, water supply tank Bhambheva, two people matching the description given by the informer were seen standing there. They got frightened on seeing the police vehicle approaching. I, ASI on the basis of suspicion with the help of the companion employees arrested them and asked their name and addresses. The first one told his name as Sanjay son of Ramphal resident of Morkhi, District Jind. On the suspicion of having narcotic substance with them, I ASI prepared a notice under section 50 of the NDPS Act and gave it to the the each of them saying I am ASI Manoj Kumar posted at 146/JND CIA Staff Jind. I suspected that you Sanjay son of Ramphal resident of Morkhi and Vijendra son of Pirthi resident of Ludana, District Jind, I suspected that you and Sanjay son of Ramphal resident of Morkhi and Virender son of Pirthi resident of Ludana, District Jind have narcotic substance, therefore you have to be searched. You have a legal right under NDPS Act that if you want that your search to be conducted in front of a gazette officer or duty Magistrate, then he can be called at the spot or you can be brought before him for search. The notice was read over and explained to them. After reading and understanding

the notice, they themselves wrote their replies of the notice that we have been informed about the notice given by you under section 50 of the NDPS Act you have read out the notices to us and explained the same to us and we have also read and understand the notices. We want our search to be done in front of the Duty Magistrate. He should be called on the spot for the search. Sanjay and Bijender above on their respective notice under section 50 of the NDPS Act and reply notice were signed as witness by HC Sandeep Kumar 413 and appended their signatures respectively. Thereafter I ASI at 7.30 PM from my Mb. No. 9416226064 called to Sh. Vikas Kumar Naib Tehsildar Pilukhera's Mb No. 903447427 and requested to reach at the spot after contacting. Thereafter after waiting at 8.40 PM Sh. Vikas Kumar Naib Tehsildar in passenger vehicle no. HR 20 AT 6489 reached at the spot in Creta who firstly discussed the situation with me ASI. After discussion, I ASI presented notice under section 50 of the NDPS Act, reply notice before him, who after seen all the notices and handed over to me ASI. Thereafter Sh. Vikas Kumar inquired about the apprehended people Sanjay and Bijender above from him and also give his introduction that I Vikas Kumar Naib Tehsildar Safidon and I am duty Magistrate, do you want to get yourself searched in front of me. On which Sanjay and Bijendra above who were arrested expressed their consent. Then Shri Vikas Kumar himself conducted the physical search of me ASI. When no intoxication was recovered, he himself prepared the report of search and seizure. On which I ASI signed as witness. Then Shri Vikas Kumar Naib Tehsildar first of all carried out the search of abovementioned Sanjay as per the rule and notice under section 50 of the NDPS Act was recovered from his right hand and during the physical search, a black coloured Plastic Polythene was recovered from the right pocket of his pant. He presented the recovered polythene in front of the ASI. When I ASI opened the recovered polythene and checked it, then according to the

experience of me ASI, Batinuma Charas (Sulpha) was recovered. Thereafter Sh/ Vikas Kumar Naib Tehsildar carried out the search of Bijender above, then from his right hand, a notice under section 50 of the NDPS Act was recovered and from the right pocket of the wearing shirt, a black coloured Polythene was recovered, who presented the recovered polythene to me ASI, then I ASI got checked the recovered polythene and while open it, then according to the experience of me ASI Battinuma Charas (Sulpha) was recovered. Then I ASI after taking out the electronic weighing machine from the vehicle first weighed the charas (Sulpha) alongwith polythene recovered from Sanjay above, then total weight was found 734 gm. Then I ASI weighed the charas (Sulpha), then total weighted the charas (Sulpha) alongwith polythene recovered from the Vijender, then total weight was found 304 grams. Thereafter I ASI arranged the 2 plastic transparent boxes and after making 1 and 2 no. and in Mark 1 Plastic Box- put the recovered charas (Sulpha) alongwith polythene recovered from the above Sanjay and in the mark 2 Plastic box- put the recovered charas (Sulpha) alongwith polythene recovered from Vijender above, and after preparing the separate parcel, the parcel were stampped by my stamp marka MK-1/1 each and parcel alongwith 2 notice under section 50 of the NDPS Act was taken in the police possession being evidence. The stamp after use and to keep a sample stamp was handed over to HC Sandeep Kumar 413 and Sh. Vikas Kumar Naib Tehsildar stamped the parcel (pulindas) with his stamp Marka SK/1/1 and after use of the stamp, himself keep the stamp. That I ASI at the time apprehended Sanjay and Bijender at the spot and in the presence of duty Magistrate, at the time of recovery got prepared a video from my Mobile phone. Since the spot was a public road, many passengers came to the spot on seeing the arrival of the police. Then I ASI told them the circumstances and requested them to become the witnesses, all of them

expressed their problem and left the place without disclosing their name and address. After their departure, the accused and witnesses signed their respective signatures on the memo and Sh. Vikas Kumar, Naib Tehsildar verified the memo and parcel. The accused Sanjay and Bijender above upon keeping 1 Kg. 38 gm. Charas (Sulpha) in their possession committed an offence under section 20-61-85 of the NDPS Act. Upon which a written complaint for registration of the case is being sent to the police station through constable Joginder Singh 489. The case number be informed after registration through slip (Parcha). I ASI myself is the complainant in the present case. So for the further investigation of the present case, the other investigating officer be appointed and sent at the spot. I ASI alongwith accused and employee alongwith case property is waiting for the second investigating officer at the spot. Today in the area of village Bhambheva. Sd/- Manoj Kumar ASI CIA Staff Jind. 17.07.2024 at 9.50 PM."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the alleged recovery i.e. 734 grams Sulfa (Charas) was effected from the present petitioner, which is non-commercial in nature and 304 grams Sulfa (charas) was recovered from the co-accused Bijender, who has already been granted the concession of regular bail by learned trial Court vide order dated 12.11.2024 (Annexure P-3).

On behalf of the State

On the other hand, the learned State counsel has produced the custody certificate of the petitioner before the Court today, which has been duly taken on record. He opposes the prayer made in the present petition, contending that the total quantity recovered from the petitioner and his co-

accused, Bijender, falls under the category of commercial quantity. He further submits that the petitioner is also involved in another case under the Excise Act, although he has been granted bail in that matter.

4. **Analysis**

Be that as it may, considering that the quantity recovered from the petitioner i.e. 704 grams of Sulfa (Charas), falls under the category of non-commercial quantity, and taking into account that the co-accused, Bijender, from whom 304 grams of Sulfa (Charas) was recovered, has already been granted regular bail by the learned Trial Court vide order dated 12.11.2024 (Annexure P-3), along with the fact that, since the framing of charges on 15.04.2025, none of the 14 prosecution witnesses has been examined, indicating that the conclusion of the trial is likely to take considerable time, this Court is of the view that the continued detention of the petitioner for an indefinite period would serve no useful purpose.

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.

28.05.2025
sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No