

CRM-M-31048-2024 &
CRM-M-60145-2024

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2025.PHHC.017015



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31048-2024
Date of Decision :05.02.2025

LAVKUSH BANSAL

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CRM-M-60145-2024

MANJIT SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rakesh Nehra, Sr. Advocate with
Mr. Manvender Chauhan, Advocate,
for the petitioner in CRM-M-31048-2024

Mr. Suneel Sharma, Advocate,
for the petitioner in CRM-M-60145-2024

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Since both the petitions are arising out of a common FIR, and a common relief of 'regular bail' has been sought therein, therefore, being amenable for common decision, same are taken up together.
2. Through the instant petition, the petitioners crave for indulgence of this Court for them being enlarged on regular bail, in case

FIR No.353, dated 03.12.2023, under Sections 22/29-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and under Section 201 of the IPC, registered at Police Station City Kharar, District Mohali.

2. The petitioner-Lavkush Bansal, has approached this Court for the second time, by filing the instant petition for seeking relief of regular bail, whereas, petitioner-Manjit Singh, has approached for the first time.

3. The earlier bail application (CRM-M-12575-2024) of petitioner-Lavkush was dismissed way back on 07.03.2024. The instant second bail application has been filed on the ground that there is no material development in the trial, as no prosecution witness has been examined so far out of the total 18.

ALLEGATIONS AGAINST THE PETITIONER

4. The instant FIR is case of chance recovery of contraband.

The relevant extract of the FIR reads as hereinafter:-

“....Today I ASI along with SI Deepak Singh 149, ASI Karanvir Singh 2278. ASI Amritpal Singh 593, CT Amritpal Singh 2143 were present at Nakabandi near Christian School Kharar, in our government vehicle number PB-65-AH-3661 along with our search kit, Laptop-printer for the purpose of checking of the bad elements. At around 09:30 AM, a private bus numbered UP 51-AT-2231 from Mohali side was stopped for cursory checking. On asking about the luggage kept in the trunk of the bus, then the bus driver told us that the helper Shakib son of Attu son of Islam resident of village Atsaini police station Garh Mukteshwar district Hapur U.P. is responsible for keeping and unloading the luggage of the passengers in the bus shed. During the checking of The luggage in the bus shed then we asked the helper of the bus, Shakib, about a cardboard box in the shed. On asking the same he told that this cardboard box was given to him by some known person from UP, and told him that it contains baby's nappy pads which are to be delivered at Hoshiarpur, whenever the bus reaches Hoshiarpur bus station, you should call him on his mobile number 81468-02047. the person will himself collect the same from them. The box will carry the parcel. When SI

Deepak Singh wanted to open the cardboard box and check it briefly, Shakib said that how can you open the parcel like this, I will not let you open this parcel. Regarding this debate, SI Deepak Singh informed me, then I informed Shakib of his legal right regarding the search under Section 50 NDPS Act. Who said that I will allow this cardboard box to be opened only in the presence of a gazetted officer. In this regard ASI has prepared a personal statement of disagreement of the said Shakib. The said Shakib signed his signature and the witness gave his testimony. I ASI informed Mr. Karan Singh Sandhu, PPS, DSP Sub-Division Kharar-1. The time was around 11:20 AM but Man ASI called from his mobile number 98557-44144 to DSP Sahib's mobile number 98878-00001. He informed about the situation and requested to reach at the spot, at which time around 11:45 AM DSP Sahib arrived in his Uniform. After asking Shakib's name and address, he revealed his identity and said that I am Deputy Superintendent of Police (Sub Division Kharar-1), posted at District SAS Nagar and am a gazetted officer of the Punjab Government and I was given this cardboard box. Suspected of having any narcotic or illegal substance. You need to search this cardboard box. DSP Sahib gave a notice to Shakib under Act No. 50 NDPS Act and said that he has the right according to the law that he can have the parcel in his bus searched by another gazetted officer or a Magistrate as per the law. There can be an arrangement or you can be taken to them, which Shakib said that I have full confidence, you can search me and the parcel in the bus. Whose statement of consent was written under Section 50(1) NDSP Act. Fard but Shakib signed and authenticated the said witness. Then, in the presence of bus driver Shakib son of Kafeel son of Sabir, resident of village Atsaini police station Garh Mukteshwar, I ASI started searching the parcel found in the trunk of the bus belonging to Shakib, under the supervision of the police, under the supervision of DSP Sahib, then the drug pill brand TRAMWEL SR. 100 Tramadol Prolonged Release Tablets IP Pau CORLIVIDOL-100 SR Tramado Prolonged Release Tablets Se Pende Ghabhar Pate. TRAMWEL SR 100 Tramadol Prolonged Release Tablets IP Counted Total 650 Sheets Each Sheet Contains 10 Narcotic Tablets Total 6500. CORLIVIDOL-100 SRT Prolonged Release Tablets are manufactured by Gildi Veerd I.I.F.-I total of 1850 leaves, each leaf contains 10 drug tablets which is a total of 18,500 drug tablets. Batch number of each leaf but deliberately blacked out with black permanent marker. 6500 Rupees TRAMWEL SR 100 Tramadol Prolonged Release Tablets IP clear 18,500 Rupees CORLIVIDOL-100 SR Tramadol Prolonged Release Tablets in 2 separate plastic cartons and preparing the parcel, Man ASI stamped his seal HS, and DSP Sahib his seal Stamped all with letter KSS and prepared sample stamp separately. The ASI handed over the stamp to SI Deepak Singh and the DSP Sahib kept his stamp and the cardboard box containing two parcels of drug pills was taken into custody by the police as evidence. The said accused Shakib has committed the crime of 22-61-85 NDPS Act and 201 IPC by keeping the drug pill in his possession and by covering his batch number with black marker and erasing his identity. The case of getting a bra by writing Rukka Haja is being sent to CT Amritpal Singh 2143 to the police station. The case should be registered and informed about the case number. Control Room be informed. Special Reprots to be made and sent to the concerned officers. I ASI along with the police party

is present at the spot. SD/ Harbej Singh.”

5. From a perusal of the above, it transpires that total 6500+18500 tablets of 'Tramadol' were recovered from the conscious possession of one Shaqid son of Attu, who was working as a helper in the offending bus, and he was arrested on 03.12.2023, and thereupon, he suffered a disclosure statement that the contraband was to be delivered to one Manjit Singh (petitioner in CRM-M-60145-2024), and it has been supplied to him by one Shubham Bansal alias Shiv Kumar Bansal. On the same date, Manjit Singh was also arrested.

6. It is relevant to mention here that during the course of investigation, no recovery, whatsoever of any contraband was recovered at the behest of or from present petitioners.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS

7. In asking for the relief (*supra*), learned senior counsel for the petitioner-Lavkush Bansal submits the entire story revolves around co-accused-Shubham Bansal, who according to the prosecution had supplied the aforesaid intoxicant tablets to Shaqid. There is no recovery of any intoxicant material effected from the present petitioner, rather he is running a *kiryana* shop.

8. He further submits that the only allegations against the petitioner-Lavkush Bansal, is that the co-petitioner-Manjit Singh has sent a payment of Rs.1,20,000/- to him on dated 29.11.2023, however, whether, this transaction has any link with the recovered contraband, is yet to be established by the prosecution by leading a cogent evidence at an appropriate stage of the trial.

9. He next submits that the main accused-Shubham Bansal, who is stated to have supplied the said contraband, has already been extended the relief of anticipatory bail by the Supreme Court vide order dated 23.07.2024 (Annexure P-6).

10. He finally submits that the petitioner-Lavkush Bansal, has suffered incarceration of more than 01 year, as on today, and he has clean antecedents.

11. Learned counsel appearing for the petitioner-Manjit Singh, adopts the arguments made by learned senior counsel for the petitioner-Lavkush Bansal, however, adding that there is no recovery of any intoxicant material, effected from the present petitioner-Manjit Singh and he is a man of clean antecedents, and he has suffered in incarceration of more than 01 year, as on today.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. *Per contra*, the learned State counsel vociferously opposes the asked for relief of grant of regular bail to the petitioners and has filed a status report dated 04.02.2025, by way of an affidavit of Sh. Karan Singh Sandhu, DSP, Sub-Division, Kharar, today in the Court in case of petitioner-Manjit Singh, whereas, short reply dated 29.08.2024 in the case of petitioner-Lavkush, is already on file. Both the replies are ordered to be taken on record.

13. He further submits that there is huge quantity of intoxicant tablets of 'Tramadol', i.e about 9 kg, therefore, contraband so recovered

undisputedly falls within the ambit of commercial quantity, and in view of the bar contained in Section 37 of the NDPS Act, the petitioner does not deserve to be release on regular bail. Hence, the present petitioners do not deserve the relief of regular bail.

14. He has also placed on record a custody certificate *qua* the petitioners, which are taken on record, and a perusal of the same reveals that the petitioners have suffered incarceration of 01 year 1 months and 19 days as on today, and they are not involved in any other criminal case.

15. He further, on instructions imparted to him by the police official, informs this Court out of the total 18 witnesses as cited by the prosecution, none has been examined till date.

ANALYSIS

16. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

17. “*Bail is the Rule and Jail is an Exception*”. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled “***State of Rajasthan V. Balchand alias Baliay***”, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be

secured otherwise, then detention is not compulsory.

18. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

19. In “**Gurbaksh Singh Sibbia v. State of Punjab**”, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy' cases observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no

hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail".

30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each

particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

20. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh", 1978 AIR (Supreme Court) 429***, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

"9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.

11. *We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.*

12. *A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.*

13. *Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful*

village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

21. The Hon'ble Supreme Court in "**Rabi Prakash Versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023**, has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

FINAL ORDER

22 On the touchstone of the recent law laid down by the Hon'ble Supreme Court in **Rabi Praksh's** case (*supra*), and considering the fact that; **(i) main accused-Shubam Bansal, who is stated have supplied the contraband, has been extended the relief of interim bail by the Supreme Court; (ii) the petitioners have suffered incarceration of 01 year 01 month and 19 days as on today and they are not involved in any other criminal case, therefore, the vigor of Section 37 of the**

NDPS Act, is diluted in view of Rabi Parkash's case (*supra*); (iii) and the trial is yet to start as out of the total 18 prosecution witnesses none has been examined, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioners. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are ordered to be released on bail, on furnishing of their respective bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

23. However, it is clarified that if in future, the petitioners are found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

24. A photocopy of this order be placed on the file of the connected case.

February 05, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No