

2025:PHHC:073506



213

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-28692-2025
DECIDED ON: 28.05.2025**

DAVINDER SUMAN ALIAS BINDA**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Naseem A. Sheikh, Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

The jurisdiction of this Court has been invoked for the 3rd time under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 105 dated 22.11.2023 registered under Sections 21 & 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Banga, District SBS Nagar.

2. Facts

Facts as narrated in the FIR reads as under:-

“The SHO, PS Sadar Banga, Jai Hind. Today I SI along with ASI Jaswinder No.254/SBSN, ASI Balwinder Kumar No.433/SBSN, ASI Balwinder Singh No.1173/SBSN, Lady Senior Constable Sita Rani No.700/SBSN, PHG Amrik Singh No.27860, while travelling in official vehicle No.PB- 32-P-5580, which was being driven by ASI

Narinder Singh No.449/SBSN, along with laptop, printer and investigation kit, in connection with patrolling and checking of suspicious elements, from the CIA Staff towards the side of village Ladhana Uchha via Palli Ucchi, Palli Jhikki, village Bhaura and at about 4:30 PM, when the vehicle of the police party was little behind the turn of Ladhana Uchha, a silver colour Alto car was seen coming from the side of village Moran Wali at high speed, whose driver, upon suddenly seeing the police vehicle, got perplexed and suddenly applied brakes and tried to reverse the car, but both the rear tyres of the car descended in the fields and the car came to a halt and from the Alto car, the driver along with a clean shaved youth sitting on the front side adjacent seat tried to run away after opening the doors who were quickly apprehended by me SI along with fellow officials on the basis of suspicion after stopping the car and upon asking their name and address turn by turn, the car driver disclosed his name as Davinder Suman @ Binda, resident of Neela Saila Road near post office village Saila Khurd, PS Mahilpur, District Hoshiarpur and the clean shaved youth disclosed his name as Akash son of Jeevan, resident of Ward No.2, Mandiani Road, Balachaur, PS City Balachaur, District SBS Nagar. The make of the car was Alto, silver colour bearing No.PB- 07W-8224. Due to the suspicion that both the above said youth were carrying some objectionable material in the car in their possession, I SI gave a telephone call from my mobile Phone No.94175-17017 to Sh. Amarnath PPS, Deputy Superintendent of Police, PBI (NDPS Act and Special Crime), SBS Nagar on his mobile phone No.75289- 03399 for conducting search and apprised him about the facts at the spot with a request to reach the spot, whereupon the DSP came present at the spot at about 5:30 PM in the official vehicle along with his staff, who was apprised of the facts at the spot and both the apprehended youth along with the car in their possession were produced before the DSP. The DSP enquired from the apprehended youth about their name and addresses and his name as Davinder Suman @ Binda son of Mohan Kumar, resident of Neela Saila Road, near Post Office, village Saila Khurd, PS Mahilpur,

District Hoshiarpur and the second youth disclosed his name as Akash son of Jeevan, resident of Ward No.2, Mandiani Road, Balachaur, PS City Balachaur, District SBS Nagar, who were told by the DSP about his name, rank and posting by stating, "I Amarnath PPS DSP PBI (NDPS Act and Special Crime), am posted in District SBS Nagar and a gazetted officer of the Punjab Police Department. I am wearing the uniform commensurate to my rank and wearing the nameplate of my name. I have a suspicion that you and the Alto car in your possession bearing No.PB-07W-8224 is carrying some objectionable material, due to which your search and the search of the car in your possession is required to be conducted. You have a legal right to get your personal search and the search of the car in your possession conducted in the presence of a Magistrate or any other Gazetted Officer, which can be arranged or you along with car can be taken before them." Turn by turn they told the DSP that, "We do not want to get our search the search of aforesaid car in our possession in the presence of any Magistrate or any other Gazetted Officer. We have full faith in you. You may get our search and the search of the car in our possession conducted." Thereupon, the DSP recorded separate consent memos, which were signed by above said Davinder Suman and Akash on their respective consent memos and attested by ASI Jaswinder No.254/SBSN and ASI Balwinder Singh No.1173/SBSN as witnesses. Before conducting the search of above said Davinder Suman and Akash and the Alto car in their possession. Efforts were made to associate a public witness with the police party on the instructions of DSP, but every passerby expressed his helplessness and did not participate in the proceedings. Thereafter, before conducting the search of above said Davinder Suman and Akash, the DSP served a separate notice under the section of NDPS Act separately and read over the notice properly to them, who heard their respective notices and appended their signatures after understanding its contents and the witnesses attested the same. Thereafter, I, on the direction of the DSP and in the presence of the DSP and the witnesses, firstly conducted the search of accused

Davinder Suman above said and from the left Dabb, a country made pistol with a magazine attach to it was recovered, which upon being unloaded, five live cartridges (rounds) with the marking 7.62 were recovered. A separate sketch of the recovered country made pistol was prepared, which has the barrel group length of 11 fingers, the iron grip having wood on both sides was found to be 6 fingers long. The recovered country made pistol along with magazine and 5 live cartridges were put in a cloth and a parcel was prepared. From the right side pocket of the lower worn by Davinder Suman above said, a transparent plastic bag containing heroin was recovered. The recovered heroin was weighed with a scale available with me and it was found to be 300 grams heroin along with the bag. The recovered 300 grams heroin was put in the same transparent bag and put in a plastic container and a parcel was prepared which was marked as Mark-A. Thereafter, the search of above said Akash was brought into effect and from his left Dabb, a country made pistol with magazine attach to it was recovered, which was unloaded and 2 live cartridges were recovered with the marking 7.65. The separate sketch of the recovered country made pistol was prepared, whose barrel group length is 8 fingers, the iron grip having coffee coloured plastic on both sides was found to be 5 fingers long. On one side of the body of the recovered pistol, it was mentioned Made in USA and on the other side, it is engraved 7.65 mm. The recovered country made pistol along with magazine and 2 live cartridges were put in a cloth bag and a parcel was prepared. A transparent plastic bag containing heroin was recovered from the right side pocket of the pant worn by above said Akash, which was weighed with the electronic scale available with me and was found to be 50 grams heroin along with the bag. The recovered 50 grams heroin was put in the same plastic bag and a parcel was prepared after putting in a plastic container which was marked as Mark-B. The search of the Alto car in possession of Davinder Suman and Akash above said was conducted, whereupon a heavy cloth bag was recovered from under the front seat adjacent to the driver's seat which was opened and checked and 2 country made

Katta and 1 country made pistol were recovered. A separate sketch of the first recovered country made Katta was prepared whose barrel length was found to be 11 fingers, the body group length was found to be 4 fingers, the grip on which the plastic has been attached on both sides with screws was found to be 5 fingers long. The recovered country made Katta was put in a cloth bag and a parcel was prepared. A separate sketch of the second recovered country made Katta was prepared whose barrel length was 8 fingers, the body group was 5 fingers long and the iron grip on which the wood was attached on both sides and covered with a black tape was found to be 5 fingers long. The recovered country made Katta was put in a cloth bag and a parcel was prepared. Thereafter, a separate sketch of the recovered country made pistol was prepared whose barrel length is 8 fingers, the iron grip having black coloured plastic on both sides with a broken plastic on one side, was found to be 5 fingers long. The recovered country made pistol was put in a cloth bag and a parcel was prepared. Then, I SI stamped the recovered parcels of two country made Katta, parcel containing 3 country made pistols, 1 parcel of plastic container containing 300 grams heroin Mark-A, 1 parcel of plastic container containing 50 grams heroin Mark-B with my seal SS. The sample stamp SS was prepared in triplicate and prepared separately on cloth. The seal was handed over to ASI Jaswinder No.254/SBSN after use. Then similarly, the DSP stamped the aforesaid two parcels of heroin weighing 300 grams and 50 grams respectively Mark-A and Mark-B with his seal AN and prepared in triplicate his sample seal AN on the sample seal SS and after use, the DSP kept the seal with himself. Then I SI took into police possession the five recovered parcels of pistols all stamped with SS and two parcels of heroin stamped with SS/AN, the sample seal SS/AN and the sample seal prepared on the cloth SS and the Alto car having silver colour bearing No.PB-07W- 8224 without RC by way of a separate memo and the memo was signed by DSP, ASI Jaswinder No.254/SBSN and ASI Balwinder Singh No.1173/SBSN as witnesses. Davinder Suman and Akash above said could not produce any license for

keeping in their respective possession the arms and live cartridges. Davinder Suman and Akash above said, by keeping in their possession illegal arms and ammunitions and 300 grams and 50 grams heroin respectively, total 300 grams heroin, have prima facie committed offence u/s 21, 29/61-1985 NDPS Act and 25- 54-1959 of Arms Act, whereupon the ruqa is being sent through PHG Amrik Singh No.27860 to PS Sadar Banga for registration of FIR against Davinder Suman and Akash above said for commission of the aforesaid offences. The FIR number be informed after registration of case. The control room be informed. I SI along with fellow officials am busy with the investigation at the spot. Today in the area of village Bhaura. Time at about 7:45 PM. Sd/- Surinder Singh SI, CIA Staff Nawanshahar, District SBS Nagar, dated 22.11.2023. Today in police station: Upon receipt of the aforesaid writing in the police station, after registration of the aforesaid FIR under the aforesaid offences, the original writing along with FIR is being sent through PHG to the SI at the spot. Copies of the FIR are being submitted before Illaqa Magistrate and senior officers as special reports through ASI Ravinder Kumar/ SBSN. The control room, SBS Nagar is being informed."

3. Contentions:

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the petitioner is in custody since 25.11.2023, wherein after framing of charges on 03.07.2024, none has been examined so far out of total 21 prosecution witnesses. He further submits that the petitioner is a person of clean antecedents, as he is not involved in any other case. He contends that recovery of contraband i.e., 300 grams of heroin is marginally over and above the commercial quantity.

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 2 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating in the present case total recovery of contraband is 350 grams of heroin out of which 300 grams was recovered from the petitioner, which is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. **Analysis**

Considering the facts that the petitioner has already suffered incarceration of 1 year, 6 months, 2 days and is is a person of clean antecedents; recovery of contraband i.e., 300 grams of *heroin* is marginally over and above the commercial quantity added with the fact that investigation is complete, challan stands presented on 17.05.2024, charges have been framed on 03.07.2024 and out of total 21 prosecution witnesses none has been examined so far, which will suffice for this Court to infer that conclusion of trial shall take considerable time, therefore, no useful purpose would be served by keeping the petitioner behind bars for uncertain period.

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 Nimesh 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

28.05.2025

Meenu

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