

2025:PHHC:073846



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28819-2025
DATE OF DECISION: 28.05.2025

KULWANT SINGH

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kanisth Ganeriwala, Advocate ,
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

This is a third petition filed by the petitioner under Section 483 BNSS,2023 seeking regular bail in FIR No.500, dated 14.12.2023, under Sections 17-C, 27-A and 29 of NDPS,1985 registered at Police Station Ellenabad, District Sirsa.

2. **Facts**

Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘To, Respected Officer Police Station Ellenabad Jai Hind. Today on 14-12-2023, Present PSI Parveen Kumar, HC Vinod Kumar No.300 / Sirsa, EHC Shankar Lal No. 664 / Sirsa, HGH Balkar Singh 2175 ANC Ellenabad Departmental vehicle No. HR24 GV- 1011 Driver HC Balwan Singh No.44 / Sirsa was present at Udham Singh Chowk Ellenabad on patrol duty with a private laptop printer. One informant informed me that there is one person who is engaged in drug smuggling. If there would be an

inquiry or investigation you can catch him. So, the barricading was done properly then Surinder Singh alias Chhinda s / o Ajit Singh r/ o Sadewal truck driver of the truck no. is number RJ07GB-6645 with a large quantity of opium. PSI stopped by signaling Surinder Singh @ Chhinda s/o Ajit Singh r / o Sadewala PS Rania on suspicion of possession of any narcotic substance. Also, served a notice u/s 50 NDPS ACT that I, PSI Praveen Kumar Incharge ANC Ellenabad, bring the notice to you Surinder Singh @ Chhinda s/o Ajit Singh r/ o Sadewala PS Rania on through notice that I suspect there is any narcotic substance in your possession and in Truck No.RJ07GB-6645 so it is necessary to search Truck No.RJ07GB-6645. You have full legal right to search of your truck no. RJ07GB-6645 right now or you can call a gazetted officer or duty magistrate on the spot to search you and your truck no. RJ07GB-6645 or you can be produced for search along with your truck no. RJ07GB- 645. Please clarify the status of your search and that of your truck No.RJ07GB-6645. Surinder Singh @ Chhinda s/o Ajit Singh r / o Sadewala Police Station, Rania read the notice and understood and gave statement stating that, "I Surinder Singh @ Chhinda s/o Ajit Singh r/ o Sadewala Police Station, Rania, I have listened to the notice given by PSI Praveen Kumar Incharge ANC Ellenabad District Sirsa and understood now I want to get my truck no. RJ07GB-6645 searched on the spot in front of a gazetted officer. After hearing and understanding the notice and the reply notice, Surinder Singh alias Chhinda signed the notice and the reply notice on his own and the witnesses. Then I requested the Gazetted Officer Mr. Ankur Garg SDO Panchayat Raj Rania appointed by the Deputy Commissioner Sirsa to reach the spot by contacting the Gazetted Officer from my personal mobile no. 70159-14203 to the mobile no. 92555-71855 at about 03:30 AM and apprised him of the situation. After which at around 04:00 am, the gazetted officer Mr. Ankur Garg, SDO Panchayat Raj Rania reached the spot by his personal car. Then I informed Surinder Singh @ Chhinda s/o Ajit Singh ro Sadewala PS Rania and Truck No. RJ07GB-6645 Gazetted Officer about the incident and presented before the officer. Surinder Singh alias Chhinda s / o Ajit Singh r / o Sadewala Police Station Rania introduced himself and Gazetted Officer made enquiries and read the notice and notice reply and then the Gazetted Officer Mr. Ankur Garg, SDO Panchayat Raj Rania asked me to search the said truck no. RJ07GB-6645 and the search of the said truck no. RJ07GB- 6645 was carried out as per the rules. When I checked the black coloured pithu bag with sky bags

written on it in English on the dashboard in front of the Gazetted Officer Mr. Ankur Garg SDO Panchayat Raj Rania, Surinder Singh @ RJO7GB- 6645, a transparent waxy polythene was found in the back pocket; a black coloured polythene tightly tied with a twine. The black waxy polythene which is transparent, there was opium in the same pittu bag of black colour and after covering it with another cloth turning it into parcel, I sealed the parcel with the seal R.K/3 and prepared the sample seal. Then presented the Sample Seal along with the parcel Opium Pithu Bag to the Gazetted Officer, Shri Ankur Garg, SDO Panchayat affixed the sample seal with the seal SK / 1 and verified the sample seal with the parcel opium pithu bag. Then, PSI parcel Opium duly sealed with R.K/3, SK / 1 Sample Seal and Truck No.RJ07GB-6645 was taken into possession through Property seizure Memo as proof. The property seizure memo was signed by Surinder Singh @ Chhinda and the witness and the Gazetted Officer verified the property seizure memos and the Gazetted Officer retained the seal after using and the PSI handed over the sample seal to HC Balwan Singh No.44 / Sirsa ANC Ellenabad. Surinder Singh alias Chhinda, son of Ajit Singh, a resident of Sadewala police station, Rania, said that he had brought the opium from a person named Mahabir at Mahabir Hotel on Neemach city bypass. And the man to whom it was meant to be given is Kulwant resident of Bahia. Surinder Singh alias Chhinda son Ajit Singh resident of Sadewala police station Rania kept 2 kg 720 grams of opium in his Dossession and Mahabir sold opium and Kulwant Singh resident of Bahia ordered the opium and committed the crime undersection 17C/61/85 NDPS ACT. Surinder Singh allas Chhinda is an accused in the case. At: Canal Culvert Hanumangarh Road, Ellenabad Sd / PSI Parveen Kumar'

2. **Contentions**

On behalf of the petitioner

It has been contended by learned counsel for the petitioner that as per the statement of Surinder Singh @ Chhinda's, Arjun Singh @ Mahabir is said to have supplied the opium, while Kulwant Singh (the petitioner) allegedly purchased it. He argues that the seized opium weighed 2 kg 720 gms, including packaging. He relies upon the order dated 20.12.2024 (Annexure P-2) passed by this Court in CRM-M-

62634-2024 vide which the co-accused namely Arjun Singh @ Mahabir, who is stated to be supplier has already been enlarged on regular bail.

On behalf of respondent-State

Per contra learned state counsel has produced the custody certificate of the petitioner which is taken on record and vehemently opposes the grant of regular bail on the ground that recovered contraband i.e. 2 kg 720 grams of opium falls under the commercial quantity, thus Section 37 of NDPS Act would create a bar. He argues that the petitioner is also involved in other cases of similar nature therefore there is every possibility of reoffending if he is enlarged on bail.

4. Analysis

The allegations against the petitioner lack supporting evidence, as no contraband or incriminating material was recovered. The case relies solely on co-accused Surinder Singh @ Chhinda's disclosure statement, which is inadmissible under Section 26 of the Indian Evidence Act since it was not made before a Magistrate. The role of the petitioner is similar to Arjun Singh @ Mahabir's, who has already been granted the concession of regular bail by this Court vide order dated 20.12.2024 (Annexure P-2). Notably, the Supreme Court in the case of “*Tofan Singh v. State of Tamil Nadu*” (2021) 4 SCC 1; has reiterated that that statements recorded under Section 67 of the NDPS Act cannot be used as confessional statements in trials under the NDPS Act, rendering the disclosure statement in this case inadmissible as evidence.

Moreover the petitioner has suffered incarceration of 11 months and 25 days as of now and in the present case after framing of charges stands on 09.08.2024, out of total 15 prosecution witnesses none has been examined so far, which is sufficient to infer that conclusion of trial would take long time and for the fault of prosecution as they are not making any headway the petitioner cannot be made to suffer indefinitely.

The principle "***bail is the rule, jail is the exception***" is a foundational doctrine in Indian criminal jurisprudence. It arises from the presumption of innocence until proven guilty and is closely tied to Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The Supreme Court has repeatedly emphasized that depriving an individual of liberty before conviction should only occur according to a fair and established legal procedure, and only when absolutely necessary

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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

28.05.2025
sham

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*

7. Thus, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

The present petition is, hereby, allowed.