

2025:PHHC:078714



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30474-2025
DECIDED ON: 03.07.2025

SURAJ

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Pal Singh Sandhu, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, 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. 109 dated 23.06.2023 registered under Sections 21 & 29 of NDPS Act, at Police Station Beas, District Amritsar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of ASI Balwinder Singh 295 ASR-R in charge Chowki Baba Bakala Sahib Police Station Beas Mobile No. 97800-03890. I stated that I am in charge of Chowki Baba Bakala Sahib Police Staion Beas. Today I along with ASI Gurdeep Singh 1390, HC Mandeep Singh 284, C Harpal Singh 429, PHG Shadi Lal 19853 along with private Laptop and Printer on Private Car for patrolling and checking of suspected persons were present at Bridge Drain

Dhyanpur Road Baba Bakala Sahib that a young man was seen walking on the south side of the drain track, who on seeing the police party turned back and took out a transparent memo envelope from the left pocket of his lower (pajama) wearing with his left hand and started to throw it on the grass. With the help of the employees, he caught him by the wrist very cleverly and asked for his name, who told his name Sajan Singh alias Bheedi son of Dalbir Singh, resident of Baba Bakala Sahib. I ASI asked the arrested young man Sajan Singh alias Bheedi about the transparent wax envelope he held in his hand, who told that it contained heroin which I was going to throw fearing upon seeing you coming. That the crime falls under NDPS ACT, which I cannot investigate under NDPS ACT as I am a Local Rank ASI, from which I informed through phone the Station House Officer that the Station House Officer has sent you at the spot, that you have arrived at the spot and the transparent wax envelope in which the youth arrested with heroin, Sajan Singh alias Bheedi, has been handed over to you and has written his statement to you, action should be taken. Correct /- Balwinder Singh ASI SD/- SAWINDER SINGH SI Police Station Beas Date 23-6-23. Action taken by Police- Today I SI was present at the police station that INSP Yadwinder Singh Station House Officer Police Station through phone informed that AS Balwinder Singh Chowki Incharge Baba Bakala Sahib has arrested a young man with heroin at Bridge Dhyanpur Road Baba Bakala Sahib who has not been investigated under the NDPS Act due to his local rank, you reach at the spot. Upon which I had reached the spot where the SI along with the investigative kit drove a private car, reached where the arrested youth was present along with his fellow workers who handed over to the arrested youth a transparent envelope containing heroin and ASI Balwinder Singh recorded his statement before me which was written down and recited to him and signed it in Punjabi which was attested by me. I, SI asked the arrested youth for his name, who gave his name as Sajan Singh alias Bheedi, son of Dalbir Singh, resident of Baba Bakala Sahib. Before checking the transparent memo envelope, the SI tried to join the party as a public witness, but no one was ready to join, then I SI issued a notice under 50 NDPS Act to accused Sajan Singh alias Bheedi that I SI Savinder Singh 535 ASR-R am stationed at Police Station Beas and I am in uniform but my name plate is attached, I suspect that I have a intoxicant object, so I want to search you, but I have the legal right to search yourself by a gazetted officer or a magistrate, then arrangements can be made. Upon which accused sajan singh Bheedi said above SI that I do not want to get myself searched before any gazetted officer or magistrate, I have faith in you, you can search me, upon which memo was prepared. Then I SI checked the transparent envelope in presence of accused Sajan Singh @ Bheedi and fellow

officials from which Heroin was recovered. Which was weighed on the investigating weighing kit. After preparing the parcel by putting it in a plastic box, I SI sealed it with his stamp letter SS, the sample stamp was prepared separately, the stamp was handed over to AS Balwinder Singh 295 and case property containing 10 grams of Heroin marked SS was taken into police custody through a separate memo. Accused Sajan singh @ Bheedi for keeping in his possession 10 grams of Heroin had committed offence 21-61-85 NDPS ACT has been done, on which the ruqa is being written and sent to the police station through PHG Sadi Lal 19853 by hand. After registering the case, the number should be informed to the control room. Today in the area of Bridge Drain Dhyampur Road Baba Bakala Sahib AT 3:05 PM '

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case on the basis of disclosure statement made by co-accused Sajan Singh @ Bhiri from whom the recovery of 10 grams of heroin was effected. He asserts that Sajan Singh @ Bhiri has already been granted the concession of regular bail by the learned Special Court, Amritsar vide order dated 02.08.2023 (Annexure P-2).

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 11 months and 25 days.

Learned State Counsel prays for dismissal of the present petition on the ground that the petitioner is a habitual offender, as he is involved in another case. Additionally he submits that the alleged recovery of 270 grams of heroin is commercial in nature, therefore, rigour of Section 37 of NDPS would be attracted in this case.

4. Analysis

Considering the facts that the petitioner has already suffered incarceration of 1 year, 11 months and 25 days; recovery of 270 grams of heroin was not effected from the conscious possession of the petitioner; co-accused Sajjan @ Bhiri has already been granted the concession of regular bail by the trial Court vide order dated 02.08.2023 added with the fact that investigation is complete, challan stands presented on 19.10.2023, charges have been framed on 23.04.2024 and out of total 14 prosecution witnesses, only one has been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, 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*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, 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.”

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.”*

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 concession of bail.

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

03.07.2025
Meenu

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