



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-29611-2025
DATE OF DECISION: 01.07.2025

KULWINDER SINGH ALIAS DAURI

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S.Sekhon, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

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

This petition has been filed under Section 439 Cr.P.C. (483 of the BNSS, 2023) seeking the concession of regular bail for the petitioner in FIR No.166 dated 24.10.2023 under Sections 21-C and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Patti, District Tarn Taran.

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

‘Copy of ruqa, To the MHC PS Sadar Patti, today I SI/SO along with ASI Hardial Singh 336/TT CT Gurwinder Singh 1070/TT, CT Jaswinder Singh 483/TT, PHG Harjeet Singh 4028, PHG Gurmail Singh 4601 in govt. vehicle bearing registration no. PB 65-BF-1069 being driven by CT Balraj Singh 1286 were present at Ghariala Road, near Chuslewar Chowk and the



checking of suspicious persons and vehicle was being conducted. Meanwhile one motorcycle was seen coming from the side of Chuslewar chowk, which was signalled to stop with the help of torch light. On which the motorcycle riders immediately tried to turn their motorcycle towards the village. I SI/SHO with help of fellow policemen apprehended them and asked about their name and address. On which the motorcycle rider disclosed his name as Kulwinder Singh @ Dauri son of Bagicha Singh resident of Bhai Ladhu and the pillion rider disclosed his name as Channa Singh son of Kashmir Singh resident of Bhai Ladhu. I SI/SHO by disclosing my identity to said persons told them that I am posted as SHO at PS Sadar Patti and I am in complete uniform. My name plate is affixed with my uniform. I have suspicion that there is intoxicant substance like heroin in your possession. In this regard search of both of you and search of your motorcycle make Splendor is required. But you have legal right that you both can get your search and search of your motorcycle be conducted from any Gazetted Officer or Magistrate, I can make arrangements for the same at the spot. They replied that we want to get our search and search of motorcycle from any Gazetted Officer. On which I SI/SHO separately prepared the non-consent memo of said Kulwinder Singh Dauri and Channa Singh and I SI/SHO from my mobile number 97797-02032 called Sh. Jaspal Singh PPS, Deputy Superintendent of Police, Sub-Division Patti on his mobile number 92164-00144 and made him aware about the entire circumstances and requested him to reach at the spot. After some time Sh. Jaspal Singh DSP along with staff came present at the spot and he by disclosing his identity to both the apprehended young persons, told them I am posted as Deputy Superintendent of Police, Sub-Division Patti and I am a Gazetted Officer of Punjab Govt. I am in complete uniform and my name plate is affixed with my uniform. I have suspicion that there is some intoxicant substance like heroin in the possession of both of you. Therefore the search of both of you and search of motorcycle make Splendor of black colour bearing registration no. PB-46AJ-9040 which is in your possession is required. But you have legal right that you both can get your



search and search of motorcycle in your possession be conducted from any other Gazetted Officer or Magistrate. On which both the young persons replied that we both have faith in you. You can get search of both of us and search of motorcycle which is in our possession in your presence. On which two separate consent memos were prepared separately and the first consent memo was being signed by Kulwinder Singh Dauri in Punjabi Language and on the second one the said Channa Singh put his left thumb impression and witnesses put their own signatures and both the consent memos were being signed by DSP. As per the directions of DSP before conducting the search of both the said persons, I SI/SHO made efforts to join witness from the public into the police party but no private witness could be joined and I SI/SHO conducted the search of both the said persons. On which from the black colored polythene lying between the pillion rider namely Channa Singh and motorcycle rider namely Kulwinder Singh heavy substance wrapped in it was recovered and on opening the polythene bag, from it heroin was recovered. On weighing the recovered heroin along with the help of computer electronic scale, it became 300 grams along with polythene bag. The recovered heroin along with polythene bag was put into a plastic box and its parcel was prepared. The parcel of plastic bag was duly sealed by I SI with my seal bearing impression 'GS' and DSP Sh. Jaspal Singh, Sub-Division Patti duly sealed with his seal bearing impression JS'. Sample seal was prepared separately on paper. I SI/SHO after use handed over my seal to ASI Hardial Singh 336/TTN and DSP kept his seal with himself after use, attested the parcel of the plastic box containing recovered heroin which was duly sealed with seal bearing impression GS+JS along with sample seal and the parcel was taken into police possession as evidence vide separate memo of recovery and the recovered motorcycle make splendor of black colour bearing registration no. PB-46-AJ-9040 without RC was taken into police possession as evidence vide separate memo of recovery. Because the said Kulwinder Singh Dauri son of Bagicha Singh and Channa Singh son of Kashmir Singh residents of Bhai Ladhu by keeping in their possession 300 grams of heroin has



committed offence under section 21 (C), 29/61/85 NDPS Act. Therefore ruga is being sent to PS by hand PHG Gurmail Singh 4601 for the registration of case. Kindly inform the FIR number after registering the case and inform control room. Kindly send special reports in the service of higher officials and Area Magistrate. I SI/SHO along with fellow policemen am busy in investigation at the spot. SD/ Gurtej Singh SI SHO PS Sadar Patti, dated 24.10.2023, today in the revenue limits of Near Chuslewar Chowk, time 10:15 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. He submits that nothing has been recovered from the conscious possession of the present petitioner whereas the recovery of 300 grams of Heroin was effected from a polythene carried by co-accused namely Channa Singh. As per the allegations, the petitioner was driving the offending vehicle and was apprehended at the spot. Moreso, the investigation in this case is complete as challan stands presented on 19.04.2024 charges stands framed on 06.08.2024 out of 12 prosecution witnesses, only 2 PWs have been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in two other FIRs also



and the offending vehicle was driven and owned by the petitioner, moreso, 300 grams of Heroin was recovered in the present FIR which is commercial in nature.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 7 months and 13 days, nothing has been recovered from the conscious possession of the present petitioner whereas the recovery of 300 grams of Heroin was effected from a polythene carried by co-accused namely Channa Singh and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 19.04.2024 charges stands framed on 06.08.2024 out of 12 prosecution witnesses, only 2 PWs have been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no 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 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 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

01.07.2025
anuradha

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