



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

CRM-M-29944-2025

Date of Decision:02.07.2025

SHUBHDEEP SINGH ALIAS VISHAL

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Sandeep Singh, AAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.92 dated 29.08.2023, under Section 21(c), 29 of N.D.P.S. Act 1985, registered at Police station Khalra, District Tarn Taran, Punjab.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“thelf Clark, Pole Station Khair, Today I INSP/BHO along with S Nammer Brigh 108/TT, ASI Paramjeet Singh 1029/TT. LR/ASIK Babulindre Segh 1386/TT, PHO Amarjeet Singh 4621 along with laptop kit on Government vehicle which was being driven by driver HC Harbhajan Singh 197/TT were on patrolling duty in search of anti social elements and were going from Khalra town through defence Gram on the foot path towards Narli and when the police party was at little distance of the bridge over the drain at village Narli then from the border side one motorcycle make Hero Splendor Plus with two haircut young person was seen coming. That on seeing the police vehicle the motorcycle driver try to ran to the motorcycle towards the village Narli side and they on



the basis of the suspicion after putting the vehicle ahead of the motorcycle. I INSP/SHO with the help of other officials got them apprehended and introduced myself to them and inquired about their name and addresses one by one. That the driver of the motorcycle disclosed his name as Gurlal Singh alias Guri, son of Shinda Singh, resident of Burj, PS Sarai Amant Khand and the pillion rider on the motorcycle disclosed his name as Lovepreet Singh alias Loive son of Gurdev Singh, resident of Kalash, PS Sarai Amant Khan. That I INSP/SHO stated to them that I am having apprehension that you are in possession of some intoxicant substance for which your and your motorcycle search is to be got conducted but you are having a legal right of getting yourself searched either from some Gazetted Officer or in the presences of some Magistrate, whom I can call at the spot. That they one by one stated that they wanted themselves to be searched to the presence of some Gazetted Officer. That on this the pacate non-consent memes of both of them was got prepared on which Gurtal Singh alias Guri signed in the English language and Lovepeeet Singh alias Love put his signatures in the Punjabi language and witnesses put their respective signature Thereafter, Sh Preetinder Singh PPS Deputy Suptd. of Police Sub-Division Bhikhiwind, the Gazetted Officer was informed through mobile phone about the entire facts and circumstances at the spot and requested him to reach at the spot. That after 15-20 minutes he on his official vehicle along the gunman came at the defence drain bridge at village Narli and before he came 1 INSP/SHO try to join the public witness into the police party but no public witness could be met. Thereafter, Sh Preetinder Singh PPS DSP inquired about the name and addresses of both the accused person turn by turn and also while introducing himself to them stated that I am Preetinder Singh PPS posted as DSP Sub-Divison Bhikiwind and is the Gazetted officer. That I am having apprehension that you are in possession of some intoxicant substances for which the search is to be got upon you and upon your motorcycle but you are having a legal right of getting yourself search conducted either from some other gazetted officer or in the presence of the Magistrate to whom I can call at the spot. That both of them reposed confidence upon him one by one and stated that you can get their search conducted



in his presence. That on this the separate consent memos of Gurlal Singh alias Guri and Lovepreet Singh alias Love were got prepared on which Gurlal Singh alias Guri signed in the English language and Lovepreet Singh alias Love signed in the Punjabi language and witnesses put their respective signatures. As per the directions of the DSP Gazetted Officer the search of Gurlal Singh alias Guri above said was got conducted and from the Parna wrapped around his waist white in colour two plastic bottles whose lid were got daus dark cowning herein were git recett Thath the help of stecuenie ging mertone wind weight of the bottles along with thersin turns out to be 801 grams That after taking it out from the bottles the same was got transferred into the transparent plastic bag and thereafter was got weghint and the total weight along with the plastic hag turne oti to be 830 grams of heroin, That the same was kept in the one plastic box and the empty bottles which were got cut were also kept in the plastic box and thereafter putting the lid over the same the parcel was got prepared and the said parcel was got scaled by me INSP/SHO with my stamp BS and the sample stamp was prepared separately and DSP also put his seal stamp PS upon the same und on the sample stamp also put his stamp. Thereafter as per the directions 1 INSP/SHO also conducted the search of Lovepreet Singh alias Love and as per the rules and under his shirt from the parna wrapped around his waist multi coloured check and on opening the some two plastic bottles with their lid sealed with black coloured tape were got recovered. That the recovered two plastic bottles containing heroin were got weighed with the help of electronic weighing machine and the total weight along with bottles turns out be 871 grams of heroin. That the plastic bottles were got out from the center and the heroin was got transferred into one transparent plastic bag and the same was got weighed and the total weighed turns out to be 798 grams of heroin along with plastic bag. That the same was kept in the separate plastic box along with the plastic bottles already cut and thereafter, was got sealed with the lid and parcel was got prepared and the said parcel was got sealed by me INSP/SHO with my stamp BS and sample stamp was prepared separately and stamp after used was handed over to SI Karamjeet Singh 1495/TT and DSP also scaled the same with his tamp PS and also put his stamp



on the sample stamp and thereafter kept his stamp with himself. That both the parcets plastic box containing heroin along with materials sealed with stamp BE-P5 along with sample stamo were taken into police custody vide separate memos. That the motorcycle without numbered make hero splendor was also taken into police custody vide separate memo On the memos the witnesses put their respective signatures. Since accused Gurlal Singh alias Guri and Lovepreet Singh alias Love by keeping 1 kg 762 gram of heron in their possession and along with material 4 plastic bottles have committed an offence under Section 21-C, 29, 61, 85 of NDPS Act, thus after writing the ruqa the same is being sent to the police station by hand ASI Salwinder Singh 1386/TT for registration of case After registering the case, the FIR number be informed. Control room be informed. After issuing the special reports, the same are being sent to the Senior Officials and Illaqa Magistrate. I ASI along with DSP along with other officials is busy in investigation at the spot. Today within the jurisdiction of Defence Drain Narli at 07:40 PM, Sd/- Balwinder Singh INSP SHO, PS Khalra, Dated 29.08.2023. Today at Police Station: At this time on receipt of above said statement at the police station the above said case and above said sections was got registered and the original statement along with the copy of FIR is handed over to the messenger ASI for handing over the same to the INSP/SHO at the spot for further investigation. After issuing the special reports, the same are being sent to the Senior Officials and Illaqa Magistrate by hand S/CT Sawinder Singh 760/TT. Control room is being informed through email. Completion Rapat No.38, time 08:45 PM, dated 29.08.2023.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as the petitioner had altercation with the police and some locals of the area. He further submits that the petitioner has not been named in the present case, neither he was present at the spot. He further submits that the petitioner has been named in



the present case on the basis of disclosure statement of co-accused vide DDR No. 32 dated 01.09.2023 and after the alleged statement petitioner was picked from the home and non-commercial quantity of intoxicant substance was planted upon him by the police and he is in custody since 01.09.2023.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the recovery effected from the co-accused is commercial in nature and the the petitioner is facilitator of smuggling of heroin.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year 09 months and 27 days for which the petitioner has suffered incarceration; the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Gurlal Singh, from whose possession the alleged contraband was recovered in addition to the fact that investigation is complete, challan stands presented to Court on 23.02.2024, charges have been framed on 27.02.2024 and total 13 prosecution witnesses have been cited and out of which only 03 have been examined, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 *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*”, SLO (CrI.) 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 concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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

02.07.2025

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