

2025:PHHC:079181



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30715-2025
DECIDED ON: 04.07.2025

GAM SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Madan Sandhu, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No.90 dated 21.08.2020, under Sections 22 & 29 of NDPS Act, registered at Police Station Rori, District Sirsa.

2. Facts

Facts as narrated in the FIR reads as under:-

“To, Station House Officer Police Station Roadi District Sirsa Jai Hind. Today myself ASI with HC Surjeel Singh No. 782, C. Raghuveer Singh No.1270 were present at village Jatana in a private vehicle at T-POINT with a personal laptop or printer. Then a person was coming seen motorcycle from village Suratiya's side. When he came closer and saw the police party in front, he suddenly got perplexed and started turning his motorcycle, but his motorcycle stopped. There

was a black colored envelope stuck on the right side of the motorcycle, due to which I suspected that there some was objectionable substance. With the help of the co- official, I apprehended the person sitting on the motorcycle and asked his name. The motorcyclist told his name on a as Gajjan Singh S/o Singh, Caste, Majabi, Singh, Roodh Sikh, Bandar Patti Roadi. On checking the motorcycle it is Honda CD-110 Dream, color black or red without number, its chassis number ME43067IKE8038598 is and engine number is D.JC67E 80038651. When I checked a black colored plastic envelope lying on the right side of the motorcycle, TREDOL-100 intoxicating pills were recovered from the plastic envelope, which on counting total 38 intoxicating pills, 10-10 intoxicating pills from each stripe of the brand Tramadol Hydrochloride Tablets 100 mg. TREDOL-100, batch No. TDP- 19009, MFG DT. May, 2019, Exp. DT. Apr. 2012. Total of 380 stripes with 10 pill in each stripe were recovered. The recovered 380 intoxicating pills were put in the same black colored plastic envelope and put into a cloth and its parcel were prepared, and stamped with DS/3 and sample seal was prepared. The recovered intoxicating pills, stamped parcel D83 with sample stamp, Motor cycle Honda CD-110 Dream or black color were taken into police custody through memo of property confiscation as evidence on which the accused and the witnesses appended their respective signatures. After the usage of my stamp, I handed over the same to HC. Surjit Singh No. 782. While questioning the accused Gajjan Singh said that he had bought these TRAMADOL intoxicating pills from Gam Singh alias Gama s/o Harcharan Singh Jatt Sikh Basi Rori. The accused Gajjan Singh, son of Roodh Singh, caste Majbi Sikh, r/o Bandar Patti Roadi by having TRAMADOL intoxicating pills in his possession and Gam Singh alias Gama, son of Harcharan Singh, Jatt Sikh, Yasi Roadi, by selling TRAMADOL intoxicating pills committed offences punishable under section 22/61/85 NDPS. ACT. Hence Tahrir has been handed over to Constable Raghubir No. 1270 and sent to the police station for the registration of case FIR. After the registration of the case, its number should be informed. XXX”

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 of co-accused Gajjan Singh from whom the recovery of contraband of 380 Tramadol

Hydrochloride Tablets 100 mg was recovered. He further submits that investigation in the matter is completed and nothing is to be recovered from the petitioner.

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 11 months and 25 days.

Learned State Counsel, on instructions from the Investigating Officer, opposes the prayer for grant of regular bail, submitting that the recovery of contraband in the present case 380 tablets of Tramadol Hydrochloride (100 mg) falls within the ambit of 'commercial quantity'. As such, the rigours of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are attracted. It is further submitted that the petitioner is a habitual offender, as he is involved in other criminal cases and has also been previously convicted in another matter.

4. **Analysis**

Considering the facts that the petitioner has already suffered incarceration of 11 months and 25 days and recovery of contraband i.e. 380 tablets of Tramadol Hydrochloride (100 mg) was not recovered from the conscious possession of the petitioner and except disclosure statement no incriminating material has been put forth by the State to connect the petitioner with the alleged contraband added with the fact that investigation is complete, challan stands presented on 14.10.2024, charges have been framed on 21.03.2025 and out of total 14 prosecution witnesses, none has been examined so far, which is sufficient for this Court to infer that conclusion of trial shall take considerable time, therefore, this Court is of the view that 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.”*

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the 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

04.07.2025

Meenu

Whether speaking/reasoned :Yes/No

Whether reportable :Yes/No