



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

214

CRM-M No.33219 of 2024 (O & M)
Date of decision : 17.7.2025

Kulwinder Singh @ Kala**.....Petitioner****Versus****State of Punjab****.....Respondent****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Abhaysher Singh, Advocate, for the petitioner

Mr. Jaypreet Singh, DAG, Punjab

SUMEET GOEL, J. (ORAL)

1. Present first petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.104 dated 11.10.2022, under Sections 15(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Bahawala, District Fazilka.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'To the Station House Officer police station Bahawala Jai Hind Today I Sub Inspector alongwith ASI Rattan Lal number 413, ASI Sawar Singh number 974/FZK, ASI Balbir Singh number 170/FZK, HC Jagjit Singh number 913/FZK, SC Kikkar Singh number 883/FZK, SC Satnam Singh number 163/FZK, SC Harjinder Singh number 977/FZK, SC Jarnail Singh number 377/FZK, SC Prem Singh number 69/FZK, SC Jaswinder Singh number 310/FZK and SC Kuldeep Singh number 619/FZK on Government vehicle Balero Camper bearing registration number PB-22-R-0870 and



Balero number PB-65-E-1961 for special check post were present at bus stand village Rajpura police station Bahawala then from Matili side one car Carola (TOYATA) white color bearing registration number HR-70-B-4730 in which two clean shaven persons were travelling. Then I Sub Inspector with the help of officials signaled the car to stop. Then I Sub Inspector inquired about the identity of both the youngmen. Then driver of the car disclosed his identity as Kulwinder Singh alias Kala son of Sulakhan Singh resident of Sohangerh Rattewala and youngman sitting on the conductor seat disclosed his identity as Sukhchain Singh alias Sukha son of Gurcharan Singh resident of Sohangerh Rattewala Police station Guruhar Sahai District Ferozepur. Abovesaid both youngmen seen to be quite perplexed and I Sub Inspector had suspicion that abovesaid young men are having some intoxicated substance in the car in their possession. Thereupon I Sub Inspector in the presence of witnesses got myself introduced turn by turn and informed that I Sub Inspector Amrinder Singh Gill Incharge CIA Headquarter Fazilka and I have suspicion that there is some intoxicated substance in the car bearing registration number mentioned above in your possession. Therefore I want to search you as well as car in your possession but under the NDPS Act you have the right to get yourself and your car search in the presence of some Gazetted Officer or any Magistrate who can be called at the spot. Thereupon abovesaid accused in separate voice said that they want to get themselves and their car searched from some Gazetted Officer. Thereupon non consent memo of Kulwinder Singh and Sukhchain Singh abovesaid was prepared. Thereupon I Sub Inspector from my mobile informed Shri Vibhore Kumar PPS Deputy Superintendent of Police Sub Division Balluana (Rural Abohar) about the circumstances and requested him to come at the spot. So after 40 minutes Deputy Superintendent of Police alongwith officials on a Government vehicle came at the spot and disclosed his identity to Kulwinder Singh and Sukhchain Singh and informed that he Vibhore Kumar PPS is posted as Deputy Superintendent of Police Sub Division Abohar (Rural) and is Gazetted Officer of Punjab Police. I have suspicion that there is intoxicated substance with you and your car bearing registration number HR-70-B-4730 in your possession. Therefore I have to conduct search upon you as well as car in your possession but as per the NDPS Act you have right to get yourself search from Gazetted Officer of some other department or Magistrate who can be



called at the spot. Thereupon Kulwinder Singh and Sukhchain Singh abovesaid replied in separate voices that we have full faith in you. You may conduct search of our self and car in our possession. Thereupon consent memos were prepared of Kulwinder Singh and Sukhchain Singh by Deputy Superintendent of Police Vibhore Kumar PPS. Then on the instructions of Deputy Superintendent of Police I Sub Inspector tried to join the public witness before conducting the search of the car but no one was found on the spot. Then I Sub Inspector in the presence of witnesses conducted the search of car bearing registration number HR-70-B-4730. Then on the rear seat of the car three plastic bags were lying under the loye (shawl) of brown color and four plastic bags were recovered from the boot of the car. All the seven recovered plastic bags were checked by opening then poppy husk was recovered from all the plastic bags. Recovered plastic bags were weighed with the computer scale turn by turn which came out to be 25 kilograms of poppy husk per bag and total came out to 175 kilograms. Then I Sub Inspector prepared the separate parcels of all the recovered seven plastic bags and put the serial numbers from one to seven. Then I Sub Inspector put my seal bearing impression 'ASG' on all the parcels. The separate parcel was prepared of the recovered loye and I sealed the same with my seal bearing impression 'ASG Sample seal Form M-29 was prepared separately. Seal after use was handed over to ASI Balbir Singh number 170 Deputy Superintendent of Police also sealed all the recovered seven plastic bags weighing 25/25 Kgs. (total 175 kilograms) and sealed the parcel from serial number one to seven with separate seal bearing impression VK and attested. The impression of the seal 'VK' was also put on the sample seal and attested it. Deputy Superintendent of Police kept the seal with him after use. Then I Sub Inspector took the case property plastic bags serial number one to seven, parcel of loye, sample seal and car make TOYOTA Carola bearing registration number HR-70-B-4730 vide separate memos in police possession. Recovery memo was attested by Deputy Superintendent of Police. Then personal search of Kulwinder Singh was conducted on the directions of Deputy Superintendent of Police and rupees 900/ currency notes and mobile make OPPO silver color was found in the personal search of Sukhchain Singh rupees 500/- currency notes and a mobile make OPPO black color were recovered which were taken into police possession vide separate personal search memo. Personal search memo



was attested by Deputy Superintendent of Police. Accused Kulwinder Singh and Sukhchain Singh abovesaid by keeping 175 kilograms of poppy husk in their possession have committed an offence under Sections 15 (c)-61-85 of NDPS Act. Therefore ruqa after reducing into writing is being send through SC Kuldeep Singh number 619 for registration of the case. Aftger registration of he case, case number be intimated. PCR/FZK be informed. Special reports be issued. I alongwith other officials are busy in investigation at the spot. Sd/ Amrinder Singh Gill Incharge CIA Headquarter Fazilka dated 11.10.2022 today in the area of Rajpura at 6:10 PM Today at Police Station on receipt of abovesaid ruqa at police station abovesaid case under the abovesaid offences against accused Kulwinder Singh alias Kala and Sukhchain Singh alias Sukha abovesaid is being registered through CCTNS and copy of FIR alongwith original ruqa is being send through same SC near Sub Inspector Amrinder Singh number 242/FRT. Special reports after issuance are being send through SC Gurmail Singh number 165/Fazilka to Ilaqa Magistrate and higher officials. PCR/FZK is being informed.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 11.10.2022. Learned counsel has further argued that mandatory provisions of NDPS Act were not complied with. Learned counsel has further submitted that the owner of the car in question, from which the contraband has been recovered and was nominated as co-accused, has been granted the concession of regular bail vide order dated 1.5.2024 passed in CRM-M No.20269 of 2024. Learned counsel for the petitioner has further submitted that out of total 18 prosecution witnesses, 14 stand examined and 3 have been given up, however, *qua* the remaining one prosecution witness, the prosecution has not been able to produce him for examination before the concerned trial Court despite having been afforded 3 opportunities. To buttress this aspect of his argument, learned counsel for the petitioner has relied upon orders dated 2.5.2025, 19.5.2025



and 4.7.2025 passed by the learned trial Court. Thus, regular bail is prayed for.

4. *Per contra*, learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel has further argued that the contraband in question is 175 kgs. of poppy husk and thus, the plea of the petitioner is adversely hit by the mandate contained in Section 37 of the NDPS Act. Learned State counsel has further submitted that since 17 witnesses out of total 18 witnesses have been examined/given up, therefore, there is sufficient progress in the trial. Learned State counsel seeks to place on record custody certificate dated 16.7.2025 in Court, which is taken on record.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 11.10.2022 whereinafter investigation was carried out and challan stands presented on 17.2.2023. It is not in dispute that out of 18 prosecution witnesses, 14 stand examined and 3 have been given up. However, the prosecution has availed more than 3 opportunities as of now to examine the remaining one prosecution witness but the same has not been done despite repeated bailable warrants having been issued against the said witness. In the considered opinion of this Court, the long incarceration of the petitioner since 11.10.2022 when *juxtaposed* with the pace of trial entitles him to grant of regular bail in view of the mandate of Article 21 of the Constitution of India. A



profitable reference in this regard is being made to a judgment passed by the Hon'ble Supreme Court in *Criminal Appeal No.2787 of 2024* titled as *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another*, as well as the dicta passed by this Court in **CRM-M No.64074 of 2024** titled *Kulwinder v. State of Punjab*, decided on 10.1.2025 (neutral citation no.2025:PHHC:002695). Thus, in such like circumstances, the mandate contained under Section 37 of the NDPS Act can be diluted.

6.1 As per custody certificate dated 16.7.2025 filed by learned State counsel, the petitioner has suffered incarceration for a period of more than 2 years and 9 months. Indubitably, the petitioner is shown to be involved in other NDPS FIR(s) and also FIR(s) under Excise Act. In view of the totality of the facts and circumstances of the case, this Court deems it appropriate not to consider the same as an impediment for grant of regular bail to the petitioner.

Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following



conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

17.7.2025

Ashwani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No