

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:085493



CRM-M-33968 of 2024 (O&M)

220

Suresh Chand

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nikhil Ghai, Advocate for the petitioner.
Mr. Rajiv Verma, Sr. DAG Punjab.

SANDEEP MOUDGIL, J. (oral)

1. **Prayer**

The jurisdiction of this Court under Section 439 Cr.P.C. (now 483 BNSS) has been invoked second time by the petitioner for grant of regular bail in case FIR No.283 dated 31.08.2022, under Section 18 NDPS Act, 1985, registered at Police Station Derabassi, District SAS Nagar, Mohali.

2. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case with ulterior motive and nothing has been recovered from the conscious possession of the petitioner. It is submitted that the petitioner has an unblemished record. Moreover it is argued that it is highly unlikely that any person carrying contraband would carry the same in a transparent polythene envelope so as to invite attention of the police.

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. According

to which, the petitioner has suffered incarceration for a period of 2 years, 10 months and 12 days, as of now. He prays for dismissal of the present petition stating that the recovery i.e. 2 Kg 600 Grams of Opium fall under the commercial quantity and therefore Sections 37 of NDPS Act would be attracted.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 02 years, 10 months and 12 days added with the facts that the recovered contraband is marginally over and above the commercial quantity; investigation is complete, wherein after framing of charges on 25.05.2023 out of total 13 prosecution witnesses, 05 witnesses have been examined. Moreover it is believed to be highly unlikely for a reasonably prudent man and carry 200 kg 600 grams of contraband in a transparent polythene in plain sight as alleged in the FIR. This information is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. *Sukhchain Singh @ Manga Versus State of Punjab*, CRM-M-7857-2022 decided on 04.04.2022, *Pardeep Singh versus State of Punjab*, CRM-M-46244-2022 decided on 19.01.2023, *Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)*' decided on 11.11.2022, '*Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)*' decided on 19.01.2022, '*Shankar Prashad Chanau Versus The State of Punjab*, CRM-

M-24090-2020, decided on 27.08.2020, *Gurpreet Kumar Versus State of Punjab*, CRM-M-17021-2021, decided on 31.08.2021, *Salim Versus State of Haryana*, CRM-M-42436-2020, decided on 24.02.2021, *Gagandeep Versus State of Punjab*, CRM-M-3055-2021, decided on 27.01.2021, *Gurpreet Gopi Versus State of Punjab*, CRM-M-41039-2019, *Singh* decided on 26.02.2020, *Dalbara Singh Versus State of Punjab*, CRM-M-47880-2022 decided on 16.01.2023', and *Vivek Watts versus State of Punjab*, CRM-M-13791-2022 decided on 15.02.2023

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 “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

4. **Relief:**

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.

15th July, 2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No