



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30548-2025
DECIDED ON: 04.07.2025

HARPAL SINGH ALIAS PALA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh Sekhon, Advocate and
Ms. Nidhi, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

The jurisdiction of this Court has been invoked for the 3rd time under (Section 439 Cr.P.C.,) Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No.143 dated 05.12.2023, under Sections 22 and 29 of NDPS Act, registered at Police Station Dirba, District Sangrur.

2. **Facts**

Facts as narrated in the FIR reads as under:-

“Copy of Ruqa: SHO P.S. Dirba, Fateh "Today, I SI alongwith HC Gursewak Singh 745/Sangrur, SC Kulvir Singh 1071/Sangrur, SC Jagjit Singh 941/Sangrur, C-Harpreet Singh 909/Sangrur; on government Vehicle NO PB-13-BE 3707 driven by SC Anwar Khan 817/Sangrur alongwith Laptop, Printer, Inverter, in connection with

Patrolling and checking of suspected persons, were just passing though Grain Market, Dirba and were going to Dirba side, it was about 3.15 P.M. and when police party reach near Sheds constructed near Grain Market, Dirba, then two persons were seen present under the Sheds, who in-between them were carrying black polythene weigh-full envelope and who were searching it. Both the persons on seeing the police party got perturbed and immediately after throwing their black colour polythene envelope tried to ran away. On suspicion, I SI got stopped the car near them, and alighted from the Vehicle and with the aid of police party got apprehended both the persons and asked about their identity. Among both of them, one person disclosed himself as Harpal Singh alias Pala son of Inder Singh, resident of Bijalpur P.S. Bhawanigarh and second person disclosed his name as Birbal Khan alias Gajju son of Gulzar Khan son of Ram Chand, resident of Ballar Patti, Ward No.12, P.S. Dirba. The black colour polythene envelope thrown by them was in open condition and in the envelope huge number of intoxicating tablets Tramadol were visible. I SI tried to associate the persons as independent witnesses at the spot but none of the person was ready to become as independent witness. Then I SI, gave separate notice u/s 50 NDPS Act to Harpal Singh alias Pala for checking of black colour polythene envelope thrown by him, upon which Harpal Singh alias Pala signed in Punjabi and HC Gursewak Singh 745/Sangrur and SC Kulvir Singh 1071/Sangrur signed respectively as witnesses. Then I SI gave separate notice u/s 50 of NDPS Act to second person namely Birbal Khan alias Gajju for checking of black colour polythene envelope thrown by him, upon which Birbal Khan alias Gajju signed in Punjabi and HC Gursewak Singh 745/Sangrur and SC Kulvir Singh 1071/Sangrur signed respectively as witnesses. Then I SI checked the black colour polythene envelope thrown by Harpal Singh alias Pala and Birbal Khan alias Gajju, which was in open condition, and from where white colour Tramadol tablets were visible and when it was checked, 100 strips of intoxicating tables make Tramadol bearing mentioning of Hydrochloride Tablets (100 Mg) 100 and

batch number was deleted and each strip was having 10 tablets and thereby 1000 tablets in total were found. And from the same polythene envelope further two more polythene black colour envelopes were found and in checking thereof 50 strips of intoxicating tablets make Alprazolam, having mentioning of Alprazolam Tablets IP NOFPRA Tablets and batch number was deleted and each strip was having 10/10 tablets and total 500 tablets were recovered and from the second envelope, 40 strips of Alprazolam having mentioning of Alprazolam tablets IP 0.5 mg ALPRASAFE 0.5 was there on each strip, and having 10/10 tablets in each strip, batch number was deleted and total 400 tablets were recovered. Then I SI prepared three separate parcels of the said recovered tablets by packing the same with respective polythene envelopes, and packed the same in cloth pocket/bag and affixed his stamp bearing words JS. Sample seal was separately prepared and stamp after use was handed over to HC Gursewak Singh 745/Sangrur. All the three parcels of intoxicating tables duly stamped, alongwith sample seal were taken into police custody through separate memos. Memos were witnessed by HC Gursewak Singh 745/Sangrur and SC Kulvir Singh 1071/Sangrur. Birbal Khan alias Gajju on enquiry disclosed that he has brought the tablets for its sale to Harpal Singh alias Pala. Act of Harpal Singh alias Pala and Birbal Khan aforesaid by keeping the intoxicating tablets in their possession and Birbal Khan alias Gajju selling the intoxicating tablets falls within the purview of offence u/s 22/29/61/85 of ND & PS Act. Therefore, I SI has drawn the ruqa for registration of criminal case under section 22/29/61/85 ND & PS Act against Harpal Singh alias Pala Son of Inder Singh, resident of Bijalpur, P.S. Bhawanigarh and Birbal Khan alias Gajju son of Gulzar Khan son of Ram Chand, resident of Ballar Patti, Ward NO.12, P.S. Dirba, which has been typed on Laptop, and after drawing it prints, sent to P.S. Dirba Dasti through SC Harpreet Singh 909/Sangrur. I SI alongwith police party is busy in investigation at the spot. After registration of case, number be informed. Control Room Sangrur be informed.

*Within Limits of Shed, Near Grain Market, Dirba at 5.10 P.m. Sd/-
Jaswinder Singh SI”*

3. Contentions:

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the petitioner is in custody since 09.12.2023 and after framing of charges on 20.11.2024 out of total 13 prosecution witnesses, only one has been examined so far. He further submits that investigation in the matter is complete, challan stands presented and nothing is to be recovered from the petitioner, therefore, no useful purpose would be served by keeping the petitioner behind bars.

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 1 year 6 months and 25 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband i.e., 1000 intoxicant tablets of Tramadol and 900 intoxicant tablets of Alprazolama in the present case is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case. Additionally he submits that the petitioner is a habitual offender, as he is involved in another case.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 1 year, 6 months and 25 days and the fact that investigation is complete, challan stands presented on 03.03.2024, charges have been framed on 20.11.2024 and out of total 13 prosecution witnesses, only one 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