

2025:PHHC:079579



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

**CRM-M-31939-2025
DATE OF DECISION: 04.07.2025**

VIJAY MASIH @ VIJAY @ KALU

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Randeep Singh Waraich, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked 5th time by the petitioner for the grant of regular bail in FIR No. 228, dated 09.10.2023 under Section 18 of NDPS Act, 1985 and Sections 25 and 29 of Arms Act, 1959 and Sections 148 & 149 IPC, registered at Police Station Division No.8, Jalandhar.

2. Facts

The case as set up by the prosecution agency, is that one Ajay Masih @ Kallu, was driving a car, wherein, the petitioner-Vijay Masih, and Gagandeep Singh alias Baba, were sitting besides him. During the search of the car, 2 kg. of opium wrapped in a black colour polythene, was recovered, which was kept under the seat of driver. All

the accused persons were arrested, and during investigation, present petitioner Vijay Masih and other co-accused, Ajay Masih suffered disclosure statement, and on the basis of that, recover of two countrymade pistol, one *desi katta* (countrymade pistol), alongwith 20 live cartridges of .32 bore were recovered, and thereupon, offence punishable under Sections 25 of the Arms Act, and under Sections 148 and 149 of the IPC, were added vide GD No.34, dated 12.10.2023.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that as per the prosecution version, 2 Kg. Opium, which falls within the ambit of non-commercial quantity, stands recovered from underneath the driver seat of the car, which was being driven by the co-accused namely Ajay Masih @ Kallu, who has already been granted the concession of regular bail by this Court vide order dated 18.04.2024 (Annexure P-2) passed in CRM-M-1992-2024. He further submits that the co-accused-Gagandeep Singh alias Baba, who was also present in the car alongwith the present petitioner, has already been extended the benefit of regular bail by the learned trial Court concerned.

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. He seeks dismissal of the present petition stating that the petitioner is involved in other cases of similar nature as well.

According to custody certificate, the petitioner has suffered incarceration of one year 8 months and 19 days, as of now,

4. Analysis

Be that as it may, considering the fact that the recovery of contraband effected from the present petitioner i.e 2 Kg opium, is of non- commercial quantity, and he has suffered incarceration of one year 8 months and 19 days, as on today, coupled with the facts that the co-accused of the petitioner namely Ajay Masih @ Kallu, who was driving the car has already been enlarged on regular bail by this Court vide order dated 18.04.2024 (Annexure P-2) and other co-accused Gagandeep Singh alias Baba, who was sitting with the petitioner, has also been granted regular bail by the learned trial Court concerned, and further the conclusion of the trial will take long time and as out of the total 17 prosecution witnesses, only one has been examined till date after framing of charges on 23.01.2024, this Court is of the view that no useful purpose would be served by keeping the petitioner 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**”, **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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

04.07.2025

Meenu

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