



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32392-2025
DECIDED ON: 18.06.2025

NADIM KHAN ALIAS NADIM

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Sandeep Singh, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C (483 BNSS, 2023) for grant for of regular bail to the petitioner in case FIR no. 168 dated 06.10.2023 under Sections 22-C and 29 of the NDPS Act, registered at Police Station City-I Mansa, District Mansa.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Today I SI Along with ASI Bikker Singh 17/Mansa. HC Hakam Singh 1107/M, Ct Harwinder Singh 624, PHG Bhola Singh S/84 on a private car driven by I SI for the purpose of patrolling and checking of suspicious persons had left in the area of PS City-1 Mansa etc. During patrolling when the police party was going from Manav Jindal Hospital to Chakerian railway crossing and when the police party was 500 yards behind the Chakerian Fatak and near the turn to ice factory street then on the left side of police party two young persons were seen sitting in the light of street lamp in the street of ice factory and they were moving

their hands in the black coloured polythene bag and on seeing the vehicle of police party they got perplexed and scared. On the basis of suspicion, I SI stopped the vehicle and apprehended them with the help of fellow officials and inquired their particulars and the first person disclosed his name as Nadeem Khan s/o Nafees Khan s/o Alish Khan r/o old Vegetable market ward number 14 Mansa and his appearance is as aged 20 years height 5'5", complexion whitish and trimmed hair and beard, built strong and athletic and cut mark on right arm, a healthy. The other disclosed his name as Anish Khan s/o Sameem Khan s/o Sarif Khan aged 26 years height 5'7", complexion whitish, trimmed hair and beard, built strong and athletic and a cut mark on right side of head, healthy. Then I SI tried to join private witness in police party through PHG Bhola Singh but due to darkness no one joined in police party as witness. Then I SI informed apprehended Nadeem Khan and Aneesh Khan that my name is SI Amrik Singh and I am posted at CIA Staff Mansa and I am dressed in uniform as per my rank and name plate is also affixed. I have suspicion of some intoxicating substance with you and in the black plastic bag in your possession. Therefore, your search and search of the black plastic bag is required, but you have the legal right that you can get your search and search of the black plastic bag in your possession in front of any GO or Magistrate or you along with the black plastic bag can be taken to them or they can be called on the spot. Separate notices u/s 50 NDPS Act were issued to them separately and it was read over to them. Both Nadeem Khan and Aneesh Khan after the understanding notices signed their respective notices in Hindi and witnesses also signed the same. Then by giving their consent they both replied that we want our search and search of black plastic bag from you and we have faith in you. On this memo of information of rank, right and consent were prepared separately. The memos were signed by both of them and by witnesses also. Then I SI, checked black plastic bag in the possession of Nadeem Khan and Aneesh Khan. The mouth of the black plastic bag was already open and from it, intoxicating vials and intoxicating tablets were recovered from it and they were checked after taking them out of the bag. On counting, they

became 14 intoxicating vials make Wincerex Cough Syrup 100 ml and their batch numbers and expiry date are rubbed and are manufactured by Wings Pharmaceuticals Pvt Ltd 43 & 44 HPSIDC Industrial Area Baddi HP 173205 and 28 strips of tablets Carisoprodol tablets (carisoma) and their batch number and expiry date are rubbed. A parcel was prepared after keeping all these into the same black plastic bag. A parcel of 14 intoxicating vials and 28 strips were sealed by I SI, with my Seal of AS and sample seal was prepared separately. After use the seal was handed over to ASI Bikkar Singh 17/M. The parcel of intoxicant vials and intoxicant tablets duly sealed along with sample seals were taken into the police possession vide separate recovery memo. Memo was being signed by witnesses. The said Nadim Khan and Anish Khan could not produce any permit/Licence or bill for keeping in their possession intoxicant vials and intoxicant tablets when demanded. Therefore the said Nadim Khan and Anish Khan by keeping in their possession intoxicant vials and intoxicant tablets has committed offence under section 22 (C)-61/85 NDPS Act. On which ruga is being sent to PS City 1 by hand PHG Bhola Singh S/84 for the registration of case against said Nadim Khan and Anish Khan under the said offence. Kindly inform the FIR no. after registering the case and issue special reports. And inform PCR Mansa separately. I SI along with fellow policemen am busy in investigation at this spot. Sd/- CIA SI Singh Amrik Staff Mansa dated 06.10.2023, in the revenue limit of City Mansa, near Chukerian crossing (Fatak) Mansa at 8:15 PM.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the alleged contraband i.e. 14 vials of cough syrup make Wincirex without batch number and expiry date and 28 strips of tablets make Carisoma (Carisoprodol) does not fall within the preview of NDPS Act. He further contends that as per the prosecution story, the petitioner and his co-accused

persons were sitting under the street light along with the contraband but in reality they were picked up from their shops only on account of inquiry regarding some illegal weapon recovered by the police. It has been contended on behalf of the petitioner that the petitioner is not a habitual offender as he is not involved in any other case.

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. He does not controvert the aforesaid fact as has been argued by learned counsel for the petitioner.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 01 year, 08 months and 08 days added with the facts that the arguments raised by learned counsel for the petitioners to the effect that the alleged contraband does not fall within the preview of NDPS Act and the said fact has not been controverted by the learned State counsel and can only be determined upon leading evidence before the trial Court after proper examination and testing of the contraband by the concerned authorities; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate produced today before this Court by learned State counsel; investigation is complete, wherein after framing of charges on 02.07.2024 out of total 13 prosecution witnesses, 07 witnesses have been examined and 01 witness has been given up, which 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.

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.”*

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him 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.

18.06.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

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