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

**CRM-M-36481-2025
DECIDED ON: 17.07.2025**

TARSEM LAL @ SEMA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karandeep Singh Sidhu, Advocate
for the petitioner.

Mr. Sandeep Singh, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No. 33 dated 16.09.2023 U/S 21(c)/25 of NDPS Act [Lateron added Section 27 and 29 of NDPS Act] at Police Station SSOC, Fazilka District Fazilka [Annexure P-1].

2. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and that the prosecution's version of events is factually incorrect and fabricated. It is submitted that, contrary to the prosecution's claim that the petitioner was apprehended while riding a motorcycle

between 4:00 PM and 6:00 PM on 16.09.2023, the petitioner was, in fact, taken into custody by the police from his residence at around 7:00 AM on the same day. In support thereof, the petitioner relies upon CCTV footage recorded at approximately 7:38 AM and 7:40 AM on 16.09.2023, which purportedly shows the police driving the petitioner's motorcycle and taking him into custody. Therefore contradicting the prosecution's narrative and raises serious doubts about authenticity of the alleged recovery and the manner of the petitioner's apprehension.

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, 9 months and 28 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery of contraband i.e., 1 kg *heroin* is commercial in nature, therefore, rigours of Section 37 of NDPS would be attracted in the present case.

3. Analysis

Taking note of the fact that the CCTV footage relied upon by the petitioner, which *prima facie* casts doubt on the prosecution's version regarding the time and manner of the petitioner's arrest, this Court is of the opinion that this petition deserves to be allowed. The discrepancies highlighted raise a triable issue as to the authenticity of the alleged recovery and the manner of arrest, which can be examined in detail during the course of trial. Moreover the petitioner has suffered incarceration for a period of 1 year, 9 months and 28 days and he is not involved in any other case, meaning thereby he is a person of clean antecedent

added with the fact that investigation is complete, challan stands presented on 12.03.2024, charges have been framed on 19.03.2024 and out of total 11 prosecution witnesses, five have 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.”

4. **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

17.07.2025

Meenu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No