

2025:PHHC:089305



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

**CRM-M-36956-2025
DECIDED ON: 21.07.2025**

INDERJEET**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked under Section 483 BNSS for grant of regular to the petitioner in case FIR No.122, dated 28.06.2023, under Section 20(b)(ii)(C), 29 of NDPS Act, 1985, registered at Police Station Roz Ka Meo, District Mewat (Nuh).

2. Contentions

On behalf of the petitioner

Learned counsel for the petitioner, while placing reliance on the order dated 07.03.2024 (Annexure P-7) passed by the learned Additional Sessions Judge, Nuh, whereby co-accused Arjun was granted the concession of regular bail, has drawn attention to a discrepancy in the said order. It has been pointed out that the contraband therein has been referred to as 97 kilograms of poppy husk; however, as per the police record, including the FIR, the substance in question is actually *Ganja Patti* and not poppy husk.

It is further contended by learned counsel for the petitioner that as per the FIR, 97 kilograms of Ganja were recovered from a vehicle (Rehri/Motorcycle) allegedly driven by Arjun, who has already been granted regular bail. The petitioner and one Ram Kishan were merely shown as riders. There is no incriminating material on record directly connecting the petitioner with the alleged contraband.

Notice of motion.

On behalf of the State

At the asking of Court, Ms. Mayuri Lakhanpal Kalia, DAG, Haryana appearing on advance notice, accepts the same on behalf of respondent-State and filed the custody certificate of the petitioner. According to which, the petitioner has suffered incarceration for a period of 2 years and 17 days, as of now.

She prays for dismissal of the present petition, submitting that a recovery of 97 kilograms of *Ganja Patti* was effected from the vehicle in question, which clearly falls within the category of commercial quantity under the NDPS Act. She further contends that the petitioner cannot claim parity with the co-accused Arjun, as the said co-accused was a Child in Conflict with Law (CCL), whereas the present petitioner was himself driving the vehicle (Rehri/Motorcycle) at the relevant time.

3. **Analysis**

As per the available record, it was Arjun who was driving the vehicle in question, while the petitioner, along with Ram Kishan, was merely a rider on the said motorcycle/Rehri. In view of this, the contention raised by the respondent-State does not inspire confidence of this Court.

Furthermore, since the date of framing of charges on 07.10.2024, not even a single prosecution witness has been examined out of a total of 22 listed

witnesses. This clearly indicates that the trial is progressing at a snail's pace. In such circumstances, this Court is of the considered view that keeping the petitioner incarcerated for an indefinite period serves no useful purpose. It is also noteworthy that the petitioner is a person of clean antecedents.

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 Nimesh 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.”*

4. **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 learned Chief Judicial Magistrate/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

21.07.2025
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*